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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957

No. 696

THILLENS, INC., a corporation, *Appellant*

v.

LLOYD MOREY, Auditor of Public Accounts of the State of Illinois; LATHAM CASTLE, Attorney General of the State of Illinois; JOHN GUTKNECHT, State's Attorney of Cook County, Illinois, *Appellees*, and

HAROLD A. ARNOLD, doing business as LAKEVIEW CURRENCY EXCHANGE; RALPH BARR and LOUIS WOLFBERG, copartners doing business as MARSHALL SQUARE CURRENCY EXCHANGE; JOHN F. BOGIE, doing business as RAVENSWOOD CURRENCY EXCHANGE; and SIDNEY SORKIN, doing business as CERTIFIED CURRENCY EXCHANGE, *Appellees.*

Appeal From the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

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Appeal From the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

Thillens, Inc., appeals from a judgment of the Supreme Court of Illinois, dated September 19, 1957, the effect of which was to reverse a declaratory judgment of the Circuit Court of Cook County, and to uphold the validity and constitutionality of the provisions of

the 1951 amendment to the Community Currency Exchange Act of 1943 (Ill. Rev. Stat. 1951, Chap. 16½, Par. 30 et seq.) which said amendent regulated "ambulatory currency exchanges" in Illinois.

This statement is submitted to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial federal question is presented.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois, together with the dissent therein, is reported in 11 Ill. 2d 579, 144 N.E. 2d 735 (1957). The final opinion, as modified on rehearing, filed September 19, 1957, and the opinion of the dissenting Justices of the Supreme Court of Illinois are attached hereto in Appendix A. The declaratory judgment entered by the Circuit Court of Cook County on October 8, 1956, together with a memorandum opinion filed by the trial judge, is likewise included in Appendix A.

An earlier opinion of the Supreme Court of Illinois, reversing a judgment on the pleadings, and remanding the case to the circuit court for a trial on the merits, is reported in *Thillens* v. *Hodge*, 2 Ill. 2d 45, 116 N.E. 2d 886 (1954). We respectfully direct the Court's attention to an opinion of the Appellate Court of Illinois upholding the propriety of a temporary injunction granted herein. (*Thillens* v. *Cooper*, 345 Ill. App. 145, 102 N.E. 2d 562 (1952). Also of importance is an earlier opinion of the Supreme Court of Illinois reviewing the nature of Appellant's business and finding it to be lawful, harmless and useful. *People ex rel Barrett* v. *Thillens*, 400 Ill. 224, 79 N.E. 2d 609 (1948).

JURISDICTION

This suit was brought under the Declaratory Judgment Act, (Ill. Rev. Stat. 1957, Chap. 110, Par. 57.1), asking that the 1951 Amendment to the Community Currency Exchange Act of 1943 (Ill. Rev. Stat. 1951, Chap. 16½, Par. 30 et seq.) be declared invalid and unconstitutional, and therefore unenforceable as applied to the check-cashing business of the appellant. A temporary injunction granted by the Circuit Court restraining the enforcement of the provisions of said amendment was affirmed in *Thillens, Inc.* v. *Cooper,* 345 Ill. App. 145, 102 N.E. 2d 562. Thereafter, judgment on the pleadings in favor of the appellant was entered by the trial court, which judgment was reversed by the Supreme Court on the ground that there should be a full trial on the merits. Upon remand, the lower court, after a lengthy trial, granted the relief prayed for in the complaint on October 8, 1956. That judgment was reversed by the Supreme Court of Illinois on May 23, 1957. Rehearing was denied on September 19, 1957. Notice of appeal was filed in that court October 16, 1957.

The jurisdiction of the United States Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court of the United States to review the judgment on direct appeal in this case: *Morey* v. *Doud,* 354 U.S. 457; *Cotting* v. *Kansas City Stock Yards,* 183 U.S. 79; *McFarland* v. *American Sugar Co.,* 241 U.S. 79.

QUESTIONS PRESENTED

(1) Do the provisions of the 1951 Amendment to the Community Currency Exchange Act of 1943 (Ill. Rev. Stat. 1951, Chap. 16½, Par. 30 et seq.) regulating "ambulatory currency exchanges" in Illinois violate the provisions of the Fourteenth Amendment to the United States Constitution guaranteeing due process of law and equal protection of the laws?

In particular:

(a) are said amendatory provisions an unreasonable and improper exercise of the police powers of the state, and do they thereby deprive appellant of its right to engage in a legitimate, useful and harmless business as guaranteed by the United States Constitution?

(b) is the exemption contained in Section 1 of said Act an unlawful and discriminatory classification so as to deny appellant the equal protection of the laws as guaranteed by the United States Constitution?

The trial court and the dissenting justices so held.

(2) Did the Supreme Court of the United States, in *Morey* v. *Doud*, 354 U.S. 457, decided while the instant appeal was pending, involving this identical statute, declare the entire Community Currency Exchange Act unconstitutional and thereby dispose of the subject matter of this appeal?

STATUTES INVOLVED

This case involves the validity of the 1951 amendment to the Illinois statute known as "The Community Currency Exchange Act"; Chapter 16½, Revised Stat-

utes of Illinois 1951, Sections 30 to 56.3, both inclusive. There is also involved the validity of a purported amendment to said Act (70th General Assembly H.B. 1031, adopted June 24, 1957, and approved by the Governor July 9, 1957). The statutory provisions involved are lengthy and the text of these provisions is set forth in Appendix B hereto.

STATEMENT

Thillens, Inc., an Illinois corporation wholly owned and originated by Melvin Thillens, appellant herein, operates a fleet of armored trucks, from which, pursuant to oral or written agreements with industrial employers in and about Chicago, Illinois, payroll checks of employees are cashed on the premises of said employers. Thillens' cashiers cash said payroll checks at various predetermined central locations on said premises, and occasionally at the various workbenches of the employees. The record shows that in 1954 Thillens was cashing nearly 5 million dollars worth of checks for an average of 75,000 working people per week in the Chicago area.

In cashing these payroll checks, Thillens does not act as the agent of the employer or any other person, but uses its own money in purchasing the checks outright for its own account. It does not sell travelers cheques, issue money orders, receive payment for public utility bills, receive automobile license applications, pay traffic fines, provide notary public and photostat service or engage in any of the myriad other businesses performed by "community" currency exchanges. It accepts no money for deposit, undertakes no fiduciary obligations for anyone, and all losses sustained on

checks are solely its own. As stated by the Supreme Court of Illinois in a prior opinion (*People ex rel Barrett* v. *Thillens*, 400 Ill. 224 at pages 228, 79 N.E. 2d 609, 611): "Any loss which occurs in connection with the transaction is borne by appellant (Thillens), and no loss can accrue to anybody else."

The complaint alleged and the trial court found that appellant was the only person substantially affected by the questioned amendment.

The service rendered by the appellant is convenient, efficient and inexpensive. The service charge to the customer depends on the size of the check and varies from 5¢ to 20¢ per check. As a result Thillens' business has grown from a small start twenty-four years ago with one truck and a driver to its present position of value and importance in Chicago's industrial community.

The questioned legislation is the result of the attempt of the Chicago Currency Exchange Association to drive Thillens out of business. This group represents the majority of the operators of a peculiar general service business widespread in the Chicago area and known as currency exchanges. It has energetically engaged in a long line of lobbying and litigation designed to protect and enhance the business advantage of its members. (See for example in Rev. Stat. 1957 Chap. 16½, Pars. 91 to 100, and Pars. 301 to 324 for acts regulating "Remittance Agents" and the "Sale of Exchange," but excepting currency exchanges in both acts.) The Association was actively involved in *Morey* v. *Doud*, 354 U. S. 457, in behalf of the unsuccessful appellants therein, the Association being there concerned with competing money orders sellers.

As to the competition offered by Thillens' check cashing business, the Association opened its campaign in 1947 under the Community Currency Exchange Act as then amended. However, in *People ex rel Barrett* v. *Thillens,* 400 Ill. 224, 79 N. E. 2d 609 (1948), the Supreme Court of Illinois held that appellant was not subject to regulation under the then effective statute, was not a "public nuisance" as contended by the Association, and found appellant's business to be "highly useful and desirable." Thereupon, at the following session of the legislature in 1949 said Association introduced a bill almost identical to that here in question, which after passage was vetoed by the Governor, the text of whose veto message is appended hereto in Appendix C. In 1951 the present Amendatory Act was passed and the Governor allowed it to become effective, withholding his approval from the measure. The text of his message at that time is likewise appended hereto in Appendix C.

The pertinent regulatory provisions of said statute create a designation, "Ambulatory Currency Exchange," and define it so as to apply to Thillens (Sec. 1), and then require a separate license for each location served by an "ambulatory exchange" (Sec. 2), impose a $25.00 license fee on each applicant for a license (since raised to $50.00), and an additional fee of $10.00 per location in the case of "ambulatory exchanges," and require that the applicant for an ambulatory license file with the State Auditor an affidavit from the owner or authorized representative of the place of business where the service is to be rendered, stating that such service is desired and that the person signing is authorized so to do (Sec. 4). The Act sets up certain personal qualifications for applicants for licenses and

sets up a procedure for notice, hearing and review of license applications, but fails to state the conditions under which the Auditor is to issue, deny or revoke a license (Secs. 10 and 15). It is further provided that each operator of an ambulatory exchange must submit financial reports to the State Auditor and that the Auditor is to inspect each location once a year (Sec. 16). The operators of "ambulatory currency exchanges" are required to provide an armed guard in addition to the cashier whenever checks are cashed outside an armored vehicle (Sec. 19.1) and are required to provide surety bonds in the amount of $2,000.00 per location served, or in the total sum of $100,000.00 for all locations (Sec. 19.2). The purpose of the surety bond is to insure against bodily injury or property loss in the course of a holdup at any location served (Sec. 19.2). A private right of action to enjoin the operation of any unlicensed currency exchange is given to the operator of any licensed exchange (Sec. 29). [Ill. Rev. Stat. 1951, Chap. 16½, Pars. 32, 34, 40, 45, 46, 49, 49.1, 49.2, 56.2.]

In 1957 the Association was so bold as to secure the passage of an amendment requiring the Auditor to hold a hearing on each application for service at each location, at which the "ambulatory exchange" must prove a positive *need* for such service or be denied the license (H. B. 1264, included in Appendix D).

The present suit filed in 1951 sought a declaration that the said amendatory Act was unconstitutional as applied to appellant and prayed an injunction against its enforcement. The precise constitutional objections here argued were first raised in paragraph 9 of the complaint (Abst. 12-17; Tr. 3). Paragraph 9 charged that the provisions of the Act violated both the Illinois

and the United States Constitutions in the following respects:

(1) That appellant is engaged in a lawful, useful and harmless business which it is entitled to continue free from arbitrary, capricious and unreasonable regulation by the legislature.

(2) That the findings, upon which this legislation is based, relating to the alleged hazard to public safety of appellant's operations, and to the alleged "ruinous competition" by appellant, are without basis in fact and show an intent to create an unlawful and unreasonable discrimination against appellant.

(3) That the exclusion of other persons or corporations transporting money or valuable property for hire (the Brinks exception) constitutes an unlawful, unreasonable and illegal discrimination against appellant.

(4) That the licensing provisions of the Act, and the various penalties provided for conducting appellant's business without a license, impose a confiscatory tax without any resulting public benefit, deprive appellant of the equal protection of law, and deprive appellant of its property without due process of law.

(5) That the unlimited discretionary authority granted to the State Auditor to grant or revoke licenses is unreasonable and will result in the loss of a valuable property right vested in appella. t, and deprive appellant of its property without due process of law.

(6) The requirement that appellant secure from each of its 600 customers a statement by the owner, or a representative duly authorized by the Board of Directors, in the case of a corporation, to the effect that appellant's services are desired, constitutes an unrea-

sonable burden on appellant's right to do business, and is a denial of due process of law.

(7) That the provisions relating to the payment of investigation fees to the Auditor, and to the submitting of financial statements, serve no reasonable purpose and are a denial of due process of law.

(8) That the Act in its entirety, and particularly the provisions relating to the furnishing of armed guards by appellant but not by community currency exchanges and others similarly situated, and the provisions relating to the furnishing of surety bonds and insurance and imposing absolute liability against appellant in the event of holdups, are an invalid and unconstitutional attempt to discriminate against appellant for purposes other than the public welfare, and are a denial of equal protection of law, and deprive appellant of its property without due process of law.

A temporary injunction was entered by the trial court, which upon appeal was affirmed. (*Thillens* v. *Cooper*, 345 Ill. App. 145, 102 N.E. 2d 562 (1952)). Thereafter, appellant moved for and was granted judgment on the pleadings. Upon direct appeal to the Supreme Court of Illinois, the judgment was set aside and the cause was remanded for trial to determine whether "the legislation bears a real and substantial relation to the public health, safety, morals or general welfare." (*Thillens* v. *Hodge*, 2 Ill. 2d 45, 57, 116 N.E. 2d 886 (1954)).

Upon remand after a long and careful hearing, during which many witnesses appeared and presented all possible factual aspects both favorable to and opposed to the legislation, the trial court held the Act unconstitutional and entered judgment in favor of the appel-

lant. (A copy of the judge's findings of fact and conclusions of law, together with his memorandum opinion, is included in Appendix A.)

The court found that the appellant's business was "the only one materially and adversely affected by the amendment * * * here under consideration" (Abst. 77; Tr. 3), that "the act, insofar as it applies to plaintiff's business, has no proper foundation in the police power of the state, is purely arbitrary, and hence, insofar as it affects the plaintiff's business, is invalid and unconstitutional." (Abst. 81; Tr. 3).

Said judgment was reversed by the Supreme Court of Illinois on May 23, 1957. Four justices voted for affirmance; two justices (Hershey and Davis) dissented; and one justice, (Schaefer) did not participate in the consideration or decision of the case (Tr. 16-28).

Subsequent to said decision of the Supreme Court of Illinois, and while the case was pending on rehearing, on June 24, 1957, the Supreme Court of the United States decided the case of *Morey* v. *Doud*, 354 U.S. 457. That decision held unconstitutional an exemption which excluded from the operation of said Act persons selling American Express Company money orders. Because the opinion denied the auditor's contentions that the invalid exemption was severable, Thillens concluded that the entire Act had been declared unconstitutional, and that the Supreme Court of the United States had disposed of the entire subject matter then pending on rehearing before the Supreme Court of Illinois. Accordingly, on July 1, 1957, Thillens filed a motion to dismiss the appeal. Appellees filed objections to said motion, and alleged that there was then pending before the Governor legislation which amended

the Act by deleting the offending exemption (H. B. 1031). (Said amendatory bill was subsequently signed by the Governor, and is included in Appendix B hereto.) Thillens thereafter suggested that the purported amendment was invalid by reason of the fact that it sought to amend legislation which was then dead, and that reenactment of the entire Act was necessary to breathe vitality into the measure.

In an opinion filed September 19, 1957, the Supreme Court denied appellant's motion to dismiss the appeal and its petition for rehearing. (Said opinion is included in Appendix A hereto.)

The objection that the purported amendment, H. B. 1031, was invalid for technical reasons was not considered by the Supreme Court of Illinois. It held that notwithstanding the *Morey* case, severability was a question of state law, and that it felt that the exemption was severable. In so holding, said court overruled its own *dicta* in *McDougall* v. *Lueder,* 389 Ill. 141, 58 N.E. 2d 899 (1948), and attempted to overrule the holding of the United States Supreme Court in *Morey* v. *Doyd,* 354 U.S. 457.

On the same date Justice Davis filed a dissenting opinion, concurred in by Justice Hershey. (Said dissent is included in Appendix A.)

On September 25, 1957, Justice Schaefer entered an order staying the mandate of the Supreme Court of Illinois pending the disposition of the present appeal (Tr. 76), and on October 16, the appellant filed its notice of appeal herein (Tr. 77-79).

THE QUESTIONS ARE SUBSTANTIAL

This appeal raises the question of the validity under the Federal Constitution of a state statute which was upheld as constitutional by the state Supreme Court, although in contradiction of its own earlier decisions, in disregard of the findings of the trial judge, and in disregard of two veto messages of the Governor and of the strong dissent of two members of the court. The questions presented are so substantial as to require plenary consideration.

1. The Question of Whether the Act Violates the Federal Constitution

In *Morey* v. *Doud,* 354 U.S. 457, this Court struck down all or a part of this identical statute because it created a "closed class" of sellers exempt from the statutory provisions and the Court could not find a reasonable basis for the discrimination.

> "Taking all of these factors in conjunction—the remote relationship of the statutory classification to the Act's purpose or to business characteristics, and the creation of a closed class by the singling out of the money orders of a named company, with accompanying economic advantages—we hold that the application of the Act to appellees deprives them of equal protection of the laws." (*Morey* v. *Doud,* 354 U.S. 457, 469).

Said opinion relies heavily on *Cotting* v. *Kansas City Stock Yards Co.,* 183 U.S. 79, and *McFarland* v. *American Sugar Co.,* 241 U.S. 79.

The case at bar is like both the *Morey* case and the *Cotting* case. It is like the *Morey* case in that there is an express (and we contend invalid) exemption in Section 1 of the identical Act. Said exemption reads:

"Nothing in this Act shall be held to apply to any person, firm, association, partnership or corporation who is engaged primarily in the business of transporting for hire, bullion, currency, securities, negotiable or non-negotiable documents, jewels or other property of great monetary value, and who only in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money directly for, or for the employees of and with the funds of and at a cost only to the person, firm, association, partnership or corporation for whom he or it is then actually transporting such bullion, currency, securities, negotiable or non-negotiable documents, jewels or other property of great monetary value, pursuant to a written contract for such transportation and all incidents thereof, * * *" (*Ill. Rev. Stat. 1951,* Chap. 16½, Par. 31).

Said exemption can apply only to Brinks and the few others engaged in armored car transport. A full briefing and argument will show no genuine basis for the discrimination. Suffice it here to say that at the trial, testimony by an official of Brinks established that while said company was carrying on its business of transporting in the Chicago area over a half billion dollars to employers for use in making up payrolls (Abst. 144; Tr. 3), said company annually cashed over five hundred thousand pay checks for employees on said employer's premises. This was usually done with the employer's money (Abst. 136; Tr. 3).

On the question of public hazard, it appeared that the holdup record of Brinks and that of Thillens is characterized through the years by the same lack of frequency. On the basis of the evidence, therefore, it appears that the legislative findings are without foundation in fact.

This case is like *Cotting* v. *Kansas City Stock Yards Co.*, 183 U.S. 79, 114-115, and *McFarland* v. *American Sugar Co.*, 241 U.S. 79, both relied on in *Morey* v. *Doud.* The vice of the questioned act in both cases lay in the fact that the legislation applied only to one person. As said in the McFarland case at page 86: "The statute bristles with severities that touch the plaintiff alone, and raises many questions that would have to be answered before it could be sustained."

The complaint alleged, the evidence established, and both the trial court and the Supreme Court found that appellant is "the only operator of a payroll check cashing service in Cook County, and the only such business of substantial size which will be materially and adversely affected by the act."

As was recognized in the *Morey* case and in the *Cotting* case, the mere creation of the closed class does not of itself invalidate legislation, *if* it can be shown that a proper purpose was intended *and* that some reasonable means was used to effectuate that purpose. Here, however, the purpose is improper and the means unreasonable. Namely, under the guise of law, the Act attempts to create a monopoly for the "community" currency exchange operators, of the business of cashing checks by "finding", in one breath, that the business operated by Thillens is "dangerous" and "hazardous" to the public and that, just by coincidence, it happens to afford *"ruinous competition"* to the currency exchanges. This coincidence, the argument goes, justifies not only the regulation of Thillens' operations but, also by a bizarre twist of logic, the very destruction of Thillens' business and its attendant "ruinous" competition, thereby very conveniently leaving to the

currency exchange operators a monopoly of the entire payroll check cashing business.

As pointed out by Justice Davis in his dissent (the full text of which appears in Appendix A hereto):

> "It is naive to regard this amendment as anything more than an ill-considered legislative attempt to place a millstone of regulation around the neck of a legitimate business, under the guise of the exercise of the police power. * * * " 11 Ill. 2d 579, 599, 144 N.E. 2d 735, 746.

Whether the statutory purpose can be justified under the police power depends ultimately in this case on whether the legislative "findings" are substantiated by the evidence. Said "findings" declared first that appellant had appropriated the most profitable part of the currency exchange business and was in ruinous competition with the community currency exchanges, and secondly that appellant's business was hazardous to the public.

After hearing lengthy evidence on all aspects of the case, the trial court held that neither "finding" was substantiated by the facts. The Supreme Court found that the second legislative "finding", that of public hazard, was substantiated (although the evidence and the trial court's findings were directly contrary), and stated that a decision on the first ("ruinous competition") was not necessary.

Neither the briefs of the defendant nor the opinion of the Supreme Court of Illinois make clear what is meant by "ruinous competition." The major legislative "finding" was that the "ambulatory currency exchanges" had appropriated the most profitable functions of the currency exchange business without incur-

ring the expenses of, or being subject to the regulations imposed on said business, and that, therefore, they were in "ruinous competition" with the community currency exchanges. It is on this finding that the legislature relied in enacting the questioned amendment. As found by the Illinois Supreme Court, in the earlier case of *People ex rel Barrett* v. *Thillens*, 400 Ill. 224, 79 N.E. 2d 609 (1948), the business of cashing checks is not the currency exchange business. The two businesses are completely different. In the ordinary operations of a community currency exchange, the operator receives large sums of money from the public for the issuance of money orders, and for the payment of local utility bills, automobile license fees, and fines. Said operator acts as a fiduciary and there is a vital public interest in imposing on him the regulations and taxing him with the costs ordinarily imposed on other fiduciaries.

In appellant Thillens' check-cashing business, however, the checks are purchased outright by Thillens; Thillens undertakes no fiduciary obligations to any member of the public and any losses sustained on such checks are borne solely by Thillens. To say that the two businesses are the same, and that therefore Thillens, who never acts as a fiduciary, should be subject to the same or even more severe (as, in fact, occurs under this amendment) regulations than said fiduciary exchanges, is to make the legislature "a handicapper in the race for commercial success," as Justice Davis aptly stated in his dissent. To avoid taking the untenable position that the two businesses were the same, the Supreme Court reasoned: (1) There have been seven holdups of Thillens' armored trucks or cashiers in 17 years; (2) By reason thereof, Thillens is operating a

"business which damages or threatens to damage the *public* safety"; and, therefore, (3) the legislature has the right to protect the community currency exchange operators from "competition" by Thillens because "it emanates from an admittedly dangerous and hazardous business." We submit that this line of reasoning is even less tenable than the one offered by the legislature and avoided by the Court; namely, that the two businesses are the same and the nonfiduciary Thillens should therefore bear as great or greater costs and regulatory burdens than the fiduciary currency exchange operators.

What the Illinois court really said was that if there is any risk to the public safety, however slight, then Thillens has no rights whatsoever under the equal protection or due process clauses, and has no protection against discriminatory treatment by the legislature. We submit that the proper principle is that if there is a risk incident to Thillens' operation justifying regulation, then that regulation must be specifically directed to that risk, and must be applicable to all persons similarly situated. In his veto message (Appendix C), Governor Stevenson stated:

> "If the theory is that the possession of currency for cashing pay checks creates an invitation to crime so as to justify control, then this bill is discriminatory since an employer who cashes his own checks is not regulated, and a community exchange, which may also be subject to holdup, is not required to have an armed guard. If such a theory were sound then each person who carried a thick wallet or wore a valuable diamond could be required to employ an armed guard and to undertake to compensate any passerby injured in the event of a holdup."

As further evidence of the discriminatory classification imposed by the amendment we respectfully call the court's attention to the myriad license fees, licensing requirements, and other regulatory provisions with which the measure abounds, all of which apply only to ambulatory exchanges (i.e. Thillens), or are much more severe than those applicable to community currency exchanges.

The licensing provisions have already been commented upon. A word is in order, however, about certain other provisions which allegedly relate to the protection of the public. Section 19.1 of the Act requires an armed guard to be stationed with the cashier whenever checks are cashed outside the armored truck. Section 19.2 requires that appellant post a surety bond, in the amount of $2,000 per location, or a total sum of $100,000, to insure against injury or loss from hold-ups. No similar requirements are imposed on community currency exchanges. Thus a classification has been made, which on its face discriminates against Thillens. Such discriminatory classification is unlawful unless it can be shown to be related in a substantial way to differences in the business involved. (*Morey* v. *Doud*, 354 U.S. 457). Of course, classification must be based on actual differences and cannot have as its source mere conjecture. (*Hartford Co.* v. *Harrison*, 301 U.S. 459).

The justification in this case for the obvious discrimination must lie if at all, in the legislative "finding" that "the nature of plaintiff's business is such as to render it hazardous and dangerous to the public safety and security." The proof of the "finding" must rest on evidence, not speculation. What is that evidence? The evidence showed and the trial court found that

over a period of seventeen years the appellant Thillens had been involved in seven holdups, during the course of which no customer had ever been injured or suffered loss (See findings of trial court judge, Appendix A). On the other hand, each of the four currency exchange operators who testified for the defendants was forced to admit on cross-examination that his exchange had been held up at least once and that in some instances there had been serious injury to members of the public. Another witness for the defendants was able to name over forty exchanges which had suffered holdups in the nine-year period preceding the trial of this case (Abst. 399-401; Tr. 4), although no statistics showing the total number of such holdups were available. The evidence affords no basis whatsoever for the legislative finding that the nature of appellant's business is "dangerous and hazardous to the public safety and security," or the arbitrary and capricious regulations based thereon.

From the preamble of the Act, which declares that "it is in the public interest to promote and foster the community currency exchanges and assure the financial stability thereof," but declares Thillens' business to be hazardous in nature and dangerous to public safety and security, down through the multitude of discriminatory regulations, which can apply only to Thillens, it is clear that the legislation here in question is discriminatory, arbitrary, and capricious and violates the equal protection clause and the due process clause of the Fourteenth Amendment of the Constitution.

These questions involving, as they do, basic principles of justice, equity and constitutional law are substantial and are of public importance.

2. The Question of the Effect of the Decision in the Morey v. Doud Case Upon the Act in Question

In *Morey* v. *Doud,* 354 U.S. 457, this Court held that the exemption granted to the American Express Company under this same "Currency Exchange Act" was unconstitutional. The Court said: "For the reasons hereafter stated, we hold that the Act is invalid as applied to others because of this discriminatory exception." (354 U.S. 457, 458).

Having invalidated part of the Act, the question then before the Court was whether the invalid portion could be separated from the rest of the Act. If it could not be separated, the entire Act would fall.

But the United States Supreme Court passed expressly on the question of the severability of the invalid portion of the Act. It held the invalid portion was not severable (354 U.S. 457, at pp. 469-70).

Whether this Court ruled correctly on the question of severability, or incorrectly as the Supreme Court of Illinois later held, it is clear that this Court did decide that question, and did hold the entire Act invalid. When this Court acted, the legislation here under attack became a nullity. This Court had disposed of the entire subject matter of this suit and there was nothing left for the Legislature of Illinois to amend (see H.B. 1031, Appendix B) or for the Supreme Court of Illinois to adjudicate.

This appeal raises two questions of far-reaching importance, which ought to be reviewed by this Court:

(1) Whether the effect of *Morey* v. *Doud,* 354 U.S. 457, was to declare the entire Community Currency Exchange Act of 1943, as amended, invalid;

(2) Whether a state court has power to enforce a statute, after that statute has been declared invalid in its entirety by the Supreme Court of the United States.

CONCLUSION

The legislation here in question is discriminatory, arbitrary, and capricious and violates the equal protection clause and the due process clause of the Fourteenth Amendment of the Federal Constitution. The questions presented by this appeal are substantial and important. They are not frivolous and are not explicitly foreclosed by prior decisions of this Court. *Zucht* v. *King*, 260 U.S. 174; *Equitable Life Assurance Society* v. *Brown*, 187 U.S. 308.

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APPENDIX A

Declaratory Judgment Entered by the Circuit Court of Cook County on October 8, 1956

This cause coming on to be heard on a complaint for a Declaratory Judgment asking that the Community Currency Exchange Act of 1943 as amended in 1951 (Ill. Rev. Stat. 1951, chap. 16½, par. 30) be declared invalid and unconstitutional and therefore unenforceable as applied to the ambulatory check-cashing business of the plaintiff, and having heard and received testimony and documentary evidence upon the issues and the facts and having heard all of the arguments of counsel and having considered all of the testimony and the evidence submitted by the parties, including the intervenor defendants, and being fully advised in the premises, and having drafted a memorandum incorporating its views and decision of this matter, which said memorandum is attached to this Declaratory Judgment as Exhibit A hereto, finds:

1. The Court has jurisdiction of the subject matter and of the parties.

2. The plaintiff is an Illinois corporation organized in 1949 for the purpose, among others, of engaging in the business of check-cashing on the premises of various industrial plants. Said corporation succeeded to the business of Melvin Thillens, an individual, engaged in exactly the same business for approximately seventeen years. The plaintiff is engaged in the business or service of, and providing facilities for, cashing checks for a fee or service charge at locations other than that of a fixed and permanent place of business of its own. The plaintiff engaged in the business of cashing payroll checks on the premises of various employers. The plaintiff, except for two others, is the only institution engaged in performing this kind of service, and is the only one of substantial size so engaged, and is the only one materially and adversely affected by the amendments to the Currency Exchange Act here under

consideration. The plaintiff owned 19 armored trucks in 1951 and 17 armored trucks at the time of the trial. Payroll checks are cashed from tables in plants in some instances, in cages in plants in other instances, and from the windows of armored trucks on the premises of plants in other instances. Wherever currency is transported into a plant, it is always done so by an armed guard. Sometimes an armored truck drops an armed cashier and guard to perform the service in one plant while the truck proceeds to another. In most instances where the check-cashing is not done from the armored truck, it is done by an armed employee of Thillens with no additional guard assigned.

3. The plaintiff is not engaged in performing any of the services of the community currency exchange except the cashing of checks which are payroll checks of the particular employer on whose premises they are cashed, with occasional exceptions of personal checks of the employer or employee thereof as an accommodation. Payroll checks are purchased outright by plaintiff, that is, plaintiff uses its money in check-cashing operations and not the money or credit of the employer; its sole income comes from fees paid for the cashing of checks. The average number of checks cashed weekly in 1951 was somewhere between 78,000 and 80,000 checks; such average in March 1954 being 93,000. The face value of such checks in 1951 was approximately $4,800,000 weekly; $6,300,000 in 1954. No loss of any of the money involved in the operation of the plaintiff's business can be suffered by anyone but plaintiff. Many of plaintiff's stops are in industrial areas not convenient to banks or community currency exchanges. Some of the business of plaintiff is carried on after banking hours and even during the nighttime.

4. In 17 years of operation no customer of plaintiff or its predecessor has been injured or damaged as a result of a holdup, albeit there have been holdups, in one or two

of which an employee of plaintiff was injured. During the same period of time there have been intermittent holdups of the community currency exchanges.

5. There is immediate competition between Thillens and some currency exchanges but there is no evidence that said competition is ruinous.

6. There were 597 currency exchanges in Illinois on September 30, 1951, and 607 currency exchanges on September 30, 1952.

7. The rates charged for cashing checks by plaintiff were uniformly less than the rates charged by currency exchange operators.

8. There was evidence of competition between plaintiff and four community currency exchanges out of the 607 currency exchanges.

9. The plaintiff by its operation has not appropriated the most profitable function of the community currency exchange business considered as a whole, but on the contrary, plaintiff's business has not materially or in any degree affected the profitable operations of the business as a whole or in part.

10. There has been no unfair or ruinous competition to the licensed community exchange business, and during the years of the plaintiff's operations the community currency exchange business has from year to year increased in size. Neither the industry nor any individual exchange has been rendered unprofitable as a result of the plaintiff's operation.

11. As a matter of the regular course of its business plaintiff does not conduct its business on public streets or highways.

12. Plaintiff does not act as a depositary or bailee of other people's money or evidence thereof but uses its own money in cashing checks.

13. Plaintiff operates its business independently of any other business.

14. Plaintiff issues no tokens to be used in lieu of money.

15. Plaintiff generally does not provide an armed guard in addition to an armed cashier when checks are cashed in plants or its customers' establishments.

16. There have been several occasions when plaintiff's employees have been held up in plants even though armed guards have been present.

17. No person has ever suffered any loss as a result of any holdup of the plaintiff's employees.

18. There is no need of any restriction of the conduct of the plaintiff's business on public streets or highways.

19. There is nothing in the provision for an armed guard to benefit the public. On the contrary, the presence of such a guard may insure the exchange of gunfire and the possibility of injury therefrom.

20. There is nothing in the nature of the plaintiff's business which justifies its regulation and the requirement of the statute of obtaining licenses and the payment of license fees.

21. Plaintiff is the only company materially and adversely affected by the Act.

22. A *bona fide* controversy exists in respect to the validity of the amendatory Act here under consideration and more particularly described as House Bill 437 of the 67th Illinois General Assembly; Laws of Illinois 67th General Assembly, 1951, Pages 562-569 entitled "An Act to amend Sections 1, 2, 3, 4, 8, 9, 10, 11, 14, 15, 16 and 18 and the title of 'An Act in relation to the regulation of community currency exchanges and the operators and employees thereof, and to make an appropriation therefor,' approved June 29 and 30 thereto;" Illinois Revised Stat-

utes, Chapter 16½ Section 30 to 56.3 thereof; upon which amendatory Act there ought to be a declaration of rights.

23. The said amendatory Act, insofar as it applies to the plaintiff's business, has no proper foundation in the police power of the state, is purely arbitrary and hence, insofar as it affects the plaintiff's business, is invalid and unconstitutional.

IT IS THEREFORE ORDERED AND DECLARED:

A. That the statute here under consideration, more particularly described as House Bill 437 of the 67th Illinois General Assembly; Laws of Illinois 67th General Assembly, 1951, Pages 562-569 entitled "An Act to amend Sections 1, 2, 3, 4, 8, 9, 10, 11, 14, 15, 16 and 18 and the title of 'An Act in relation to the regulation of community currency exchanges, and the operators and employees thereof, and to make an appropriation therfor,' approved June 30, 1943, as amended, and to add sections .01, 19.1, 19.2, 28, 29 and 30 thereto;" Illinois Revised Statutes, Chapter 16½ Section 30 to 56.3 thereof; which purports to amend the Currency Exchange Act of the State of Illinois is invalid and unconstitutional insofar as it applies to the business of the plaintiff and is therefore as against plaintiff, unenforceable, null and void.

B. That the plaintiff has full right and legal authority to carry on the business described in the complaint without applying for any license and without interference on the part of the defendants or any of them or any other officer of the State of Illinois.

ENTER:

WILLIAM J. TOUHY
Judge

DATED: October 8, 1956

Memorandum Opinion Rendered by Judge Touhy

This case comes on to be heard on a complaint for a Declaratory Judgment asking that the Community Currency Exchange Act of 1943 as amended in 1951 (Ill. Rev. Stat. 1951, chap. 16½, par. 30) be declared invalid and unconstitutional and therefore unenforceable as applied to the ambulatory check-cashing business of the plaintiff.

In a previous hearing this court entered such a Declaratory Judgment on the pleadings, from which order an appeal was taken to the Supreme Court of the State of Illinois and the judgment entered by it reversed the judgment of the Circuit Court and remanded the cause with directions to overrule the plaintiff's motion for judgment on the pleadings and to take such other action as appropriate to resolve the issues presented by the pleadings. (*Thillens* v. *Hodge*, 2 Ill. 2nd, p. 40)

The Supreme Court had considered the question whether the Currency Exchange Act of 1943 applied to the ambulatory currency exchanges in the case of *People ex rel.* v. *Thillens*, 400 Ill. 224. In *Thillens* v. *Hodge, supra*, the court said, at pages 54 and 55:

> "This court there" (*People* v. *Thillens*, 400 Ill. 224) "held that the business of Thillens in conducting an ambulatory currency exchange did not come within the terms or intent of the Community Currency Exchange Act as originally adopted, and, further, that the ambulatory currency exchange business as operated by Thillens could not be constitutionally subjected to licensing or regulation. In reaching the latter conclusion, this court first noted that it is a fundamental and well-established rule, both in the United States courts and in the courts of this State, as a firmly settled constitutional principle, that every citizen is guaranteed the right to engage in any lawful, useful and harmless business or trade, and it is not within the constitutional authority of the State legislature in the exercise of police power to interfere with the rights of the individual to carry on a legiti-

mate business where no interest of the public safety, welfare or morals is damaged or threatened."

The court further said that there was neither allegation nor evidence in *People ex rel.* v. *Thillens* to show an adverse effect upon the public safety, morals, health or welfare, but that the instant case involves an amendment to the original Act with the express finding by the legislature

> "to the effect that ambulatory currency exchange business was hazardous and dangerous to the public safety and security, in that it offered unfair and ruinous competition to licensed community currency exchange business and endangered the public safety. *Although the complaint alleged facts which, if true, would make the decision of People* v. *Thillens, 400 Ill. 224, controlling, yet very material allegations of fact in the complaint were specifically denied by the answer.* Such denials went quite specifically and directly to the nature of plaintiff's business, the identity of persons who would bear the losses, if any, which occurred in plaintiff's business, the nature of the principal competitors of the plaintiff, and whether or not any persons have ever been injured or damaged incident to the operation of the plaintiff's business as a result of criminal actions. *The difference in the legislative acts under consideration, the existence of a finding of fact, and the existence of disputed issues of fact operate to distinguish this case from that of People* v. *Thillens and prevent the decision of this court in People* v. *Thillens from controlling the decision in this case at the present time.*" (Italics ours.)

In *Thillens* v. *Hodge* the court held that the legislative determination that regulations are needful

> " • • • does not foreclose the courts from exercising their judicial function, and the reasonableness and propriety of regulations and its application must be decided by the court from the facts and circumstances in evidence."

and

> "Where the reasonableness of the legislation is fairly debatable, the courts will not interfere with the legislative judgment, and will not substitute their judgment for that of the legislative department."

The rule to be applied in deciding this cause is necessarily found in the case of *Thillens* v. *Hodge*, where the court said, on page 55 of the report, that "the complaint alleged facts which, if true, would make the decision of *People* v. *Thillens*, 400 Ill. 224, controlling." The inquiry is whether the plaintiff has met its burden here of proving the truth of the alleged facts.

In *Thillens* v. *Hodge* the court said that the facts alleged in the complaint may be summarized as follows, at page 47, et seq.:

> "Plaintiff is an Illinois corporation organized in 1949 for the purpose, among others, of engaging in the business of transporting currency and cashing payroll checks issued to employees of industrial and business concerns, only on the premises of employers issuing such checks, and only pursuant to contract between the company and the employer. The corporation succeeded to the assets and operation of the business previously conducted by the principal stockholder continuously and without interruption from August, 1934, to the date of filing the complaint. The plaintiff's sole business consists of transporting currency belonging to the plaintiff to the premises of business establishments pursuant to contract and the cashing of payroll checks of employees on the premises of the employer. With the exception of two small similar businesses and isolated transactions conducted by Brink's, the plaintiff is the only owner and operator of a payroll check-cashing business in Cook County and the only such business of substantial size which will be materially and adversely affected by the amended act. The plaintiff owns and operates a fleet of 19 armored trucks. In most instances payroll checks are cashed at windows from within the armored trucks, parked on premises of the

employer. In all cases where checks are otherwise cashed, the currency is transported by plaintiff's cashier, under the protection of armed guards provided by the plaintiff or the employer. The plaintiff does not engage in any other business nor cash anything other than payroll checks issued by an employer who has contracted for such services. Plaintiff's services are not available to the general public or to the community neighborhood. The plaintiff does not issue money orders, accept money for deposit or payment of utility bills, nor accept items for collection. All payroll checks are purchased outright by the plaintiff with its own funds. Its sole income is from a nominal service charge based on the size of the check cashed. Plaintiff cashes checks of more than 75,000 employees weekly, averaging in excess of $4,750,000 a week. During the year ending March 1, 1951, plaintiff cashed 3,874,194 checks in exchange for $234,877,000. Any loss which occurs is borne by the plaintiff and no loss can accrue to any others. A very substantial part of plaintiff's business is conducted in the industrial and outskirt areas where there is no practical or convenient means by which payroll checks can be cashed, except for plaintiff's services. The principal competitors of plaintiff's business are taverns. During the 17 years of operation by plaintiff and its predecessor, no person had been injured or damaged as the result of any holdup or other criminal action directed at any of plaintiff's employees."

This court has heard and received testimony and documentary evidence upon the issues of whether such facts as alleged exist, and whether plaintiff has met its burden of proof so that it is within the jurisdiction of the court to justify the declaration that the Act in question is void.

The court has considered all the testimony and evidence and finds as follows:

The plaintiff is an Illinois corporation organized in 1949 for the purpose, among others, of engaging in the

buisness of check-cashing on the premises of various industrial plants. This corporation succeeded to the business of Melvin Thillens, an individual, engaged in exactly the same business. The plaintiff engaged in the business of cashing payroll checks on the premises of various employers, there being instances, however, of the cashing of payroll checks outside such premises and on the public streets while plaintiff was engaged in promotional services. The plaintiff cashes occasional checks on the premises of employers which in accommodation of the employer or connected with the employer are not payroll checks. The plaintiff, except for two others, is the only institution engaged in performing this kind of service, and is the only one of substantial size so engaged, and is the only one materially and adversely affected by the amended Act. The plaintiff owned 19 armored trucks in 1951 and 17 armored trucks at the time of the trial. Payroll checks are cashed from tables in plants in some instances, in cages in plants in other instances, and from the windows of armored trucks on the premises of plants in other instances. Wherever currency is transported into a plant, it is always done so by an armed guard. Sometimes an armored truck drops an armed cashier and guard to perform the service in one plant while the truck proceeds to another. In most instances where the check-cashing is not done from the armored truck, it is done by an armed employee of Thillens with no additional guard assigned.

The plaintiff is not engaged in performing any of the services of the community currency exchange except the cashing of checks which are payroll checks of the particular employer on whose premises they are cashed, with occasional exceptions of personal checks of the employer or employee thereof as an accommodation. One check was cashed by an armored truck on a Chicago street at a time when the plaintiff was engaged neither in the cashing of payroll checks nor in promotional services; in this instance it was done by an employee of plaintiff contrary

to plaintiff's rules. Payroll checks are purchased outright by plaintiff, that is, plaintiff uses its money in check-cashing operations and not the money or credit of the employer; its sole income comes from fees paid for the cashing of checks. The average number of checks cashed weekly in 1951 was somewhere between 78,000 and 80,000 checks; such average in March 1954 being 93,000. The face value of such checks in 1951 was approximately $4,800,000 weekly; $6,300,000 in 1954. No loss of any of the money involved in the operation of the plaintiff's business can be suffered by anyone but plaintiff. Many of plaintiff's stops are in industrial areas not convenient to banks or community currency exchanges. Some of the business of plaintiff is carried on after banking hours and even during the nighttime.

The complaint alleges that the principal competitors of plaintiff were taverns located in the vicinity of the various industrial plants at which plaintiff makes its stops. The evidence does not warrant a finding that this allegation has been proved.

In 17 years of operation no customer of Thillens or its predecessor has been injured or damaged as a result of a holdup of plaintiff, albeit there have been holdups of Thillens in various places, in one or two of which an employee of plaintiff was shot. During the same period of time there have been occasional or intermittent holdups of the community currency exchanges.

There is immediate competition between Thillens and some currency exchanges but there is no evidence that that competition is ruinous. There were in Illinois 597 currency exchanges on September 30, 1951, and 607 currency exchanges on September 30, 1952.

The rates charged for cashing checks by plaintiff was uniformly less than the rates charged by currency exchange operators. There was testimony of competition by

Thillens at four community currency exchanges out of the 607 licensed exchanges.

In the former review of this cause the Supreme Court said that the holding in the case of *People* v. *Thillens*, 400 Ill. 224, would not control the decision of this case at the time this case was under consideration because of the difference of the legislative acts, because of the finding of facts by the legislature and because of the issue of facts created by the pleadings in this case.

In *People* v. *Thillens*, 400 Ill. 224, the Supreme Court pointed out that it is not within the constitutional authority of the legislature in the exercise of its police power to interfere with the rights of an individual to carry on a legitimate business where no interest of public safety, welfare or morals is damaged or threatened, and that the business of moving money to the premises of an employer by armored truck and taking up the payroll checks of employees is not of such a character as to adversely affect the public health, safety, morals and welfare.

It is true that what the court there said resulted in a holding that the Community Currency Exchange Act did not apply to Thillens and the court there did so by way of an application of the rule that the court should give such construction to a statute as will render it valid rather than invalid. The court held the Act valid but in so doing held it not applicable to Thillens and if applicable to Thillens, it would have been an unreasonable and unconstitutional exercise of authority by the legislature.

The Act presently under consideration is expressly made to apply in the ambulatory currency exchange business. The Supreme Court in its review of the present case distinguished the former Thillens case on the ground that nothing was alleged or shown by the evidence which rendered the business of moving money to the premises of employer by armored truck and taking up the payroll

checks of employees to be of such character as to adversely affect the public health, safety, morals or welfare.

The inquiry here is therefore, whether the evidence before this court establishes a connection between Thillens' business and the needs of the public welfare.

The intervenor cites many cases for the purposes of establishing the rules governing the court in disposing of these issues, but we need go no further than the ruling of the Supreme Court in this case where it said, at page 56:

> "It is well established that a legislative determination that regulations are needful is not conclusive nor unlimited, and in order to be imposed they must bear some definite and substantial relation to the public health, safety, morals, or welfare. (*Zadworny* v. *City of Chicago*, 380 Ill. 470; *Klein* v. *Department of Registration*, 412 Ill. 75; *Midland Electric Coal Corp.* v. *County of Knox*, 1 Ill. 2d 200.) At the same time, it is a question for legislative determination whether or not an evil exists and what means should be adopted to prevent it, and its acts will not be interfered with unless they are clearly in violation of some constitutional limitation. (*Stewart* v. *Brady*, 300 Ill. 425.) Where the reasonableness of the legislation is fairly debatable, the courts will not interfere with the legislative judgment, and will not substitute their judgment for that of the legislative department. But that does not foreclose the courts from exercising their judicial function, and the reasonableness and propriety of regulation and its application must be decided by the court from the facts and circumstances in evidence. (*Midland Electric Coal Corp.* v. *County of Knox*, 1 Ill. 2d, 200.) Also, the party attacking the validity of a statute has the burden of proving that it is clearly arbitrary and has no foundation in the police power for its existence. (*Midland Electric Coal Corp* v. *County of Knox*, 1 Ill. 2d, 200; *Village of Western Springs* v. *Bernhagen*, 326 Ill. 100.) Where there is room for legitimate difference, the courts will not investigate the facts for the purpose of determining whether the declaration was warranted by the facts. (*Gadlin* v. *Auditor of Public Accounts*, 414 Ill. 89)

and all presumptions are in favor of the constitutionality of the legislation once it becomes the law of the State, and all reasonable doubts must be resolved in its favor. (*Gadlin* v. *Auditor of Public Accounts*, 414 Ill. 89.)"

During the course of the arguments made before this court the attorney for the intervenor cited the case of *Williams* v. *Mayor*, 289 U.S. 36, p. 42. When we compare the following language of the United States Supreme Court with the language of our Supreme Court just above quoted, we find confirmation of the statement of our Supreme Court. Thus the U.S. Supreme Court said as follows:

"* * * the judicial function is exhausted with the discovery that the relation between means and end is not wholly vain and fanciful, an illusory pretense. Within the field where men of reason may reasonably differ, the legislature must have its way. *Otis* v. *Parker*, *supra*. Nor in marking out that field will the court be forgetful of presumptions that help to fix the boundaries. 'As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute.' *O'Gorman and Young* v. *Hartford Fire Insurance Co.*, 282 U.S. 251, 257. * * *"

Accordingly, the inquiry here is to be measured in accordance with the contents of the foregoing quotations and we must consider the findings of fact made by the legislature in the statute in question, remembering that the legislative department does not possess the power to declare what shall be conclusive evidence of the fact. (*Carolene Products Co.* v. *McLaughlin*, 365 Ill. 62, p. 70.)

Our Supreme Court in the prior review of the present case recognized that there is nothing conclusive in the legislative findings in the statute involved and expressly said (p. 57 of the opinion) that,

"Although the court must give due weight to the legislative finding of fact that the public safety and security require such legislation, such legislative finding is not conclusive and the court must exercise its judicial function and make its determination of the basic question from the facts and circumstances of the case. The complaint and answer put in issue facts and circumstances which bear directly upon the extent to which the public safety and security is related to the conduct of ambulatory currency exchanges. The trial court was in error in enfering judgment on plaintiff's motion but should have required the introduction of evidence in order to resolve the factual issues before deciding the legal questions presented."

We inquire, therefore, as to which of the legislative findings of fact are supported by the evidence in this case, and having made such inquiry and finding, determine how many of the legislative findings are supported or disproved by the evidence here, whether or not the legislature acted within its boundaries, acted beyond its boundaries, or whether there is a doubt. Of course, if the legislature acted within the boundaries of its powers or there is doubt as to whether it acted within the boundaries of its powers, the court here must necessarily find that the Act is valid. However, if the court finds that the legislature acted beyond its boundaries, it must find that the Act is invalid.

Counsel for the intervenor cites many cases to prove that the state in a proper case may exercise the police power in such manner that it transcends property rights and even contract rights and where the reasonableness of a legislative finding is reasonably debatable, the statute policing a business because of that finding is constitutional. Counsel cites many cases in support of the proposition that courts must make every presumption in favor of the Act and must scrupulously avoid any temptation to invade the province of the legislature. With these doctrines, of course, there can be no quarrel. We think that the cases

cited by counsel properly lay down the limitations within which this court must make its determination.

The legislative findings when related to the evidence in this cause are corroborated in the following regards:

(1) The plaintiff is engaged in the ambulatory currency exchange business in that it is engaged in the business or service of, and providing facilities for, cashing checks for a fee or service charge at locations other than that of a fixed and permanent place of business of its own.

(2) The plaintiff is in unlicensed competition with the community currency exchange business.

(3) The operation of the plaintiff's business being limited to the cashing of checks only concerns itself with what is the most profitable function of the community currency exchange business.

The legislative findings when related to the evidence in this cause are not supported by the evidence in the following regards:

(1) The plaintiff by its operation has not appropriated the most profitable function of the community currency exchange business considered as a whole, but on the contrary, there is no evidence that the operations of the plaintiff's business has materially or in any degree affected the profitable operations of the business as a whole or in part.

(2) There has been no unfair or ruinous competition to the licensed community exchange business, and the evidence shows that during the years of the plaintiff's operations the community currency exchange business has from year to year increased in size. There is no other evidence to show that the industry or any individual exchange has been rendered unprofitable as a result of the plaintiff's operation.

Counsel also points out that the *Consolidated Coal case*, 135 Ill. 210, holds that ruinous competition means no more than causing or tending to cause ruin. We think the case not quite as broad in its holding as counsel urges for it, inasmuch as the court there was considering the term within the language of a particular covenant concerning the operation of a coal mine and was careful to restrict its definition to the particular subject matter before it.

Since the court has above found that there has been no unfair or ruinous competition as a result of the plaintiff's operation, factually there is no necessity of imposing a license fee for the purpose of equalizing the plaintiff's costs with those of the community currency exchange business and it is unnecessary to pass upon the legal question whether the legislature would impose a license fee for that purpose only.

However, there remains the question of whether the legislature, without regard to its findings of fact, has undertaken to regulate the ambulatory currency exchange business in the interest of public welfare, safety and security, whether it may do so, what regulations it has imposed justifying the imposition of a license fee not as an equaliser, but as a means of defraying the cost of administration of the regulations imposed.

By the amendatory act of 1951, the legislature has imposed the following restrictions upon ambulatory currency exchanges, aside from the requirement of obtaining a license:

(1) No license may be issued for the conduct of such business on any public street or highway.

(2) It may not accept money, etc., for deposit or act as bailee for money, etc.

(3) It may not be conducted as a department of another business.

(4) It may not issue tokens to be used in lieu of money.

(5) It must, when not cashing checks from an armored truck, provide at least one armed guard in addition to the cashier.

(6) It must post a surety bond to pay damages for losses occasioned by its failure to post an armed guard as above.

(The Act excepts ambulatory exchanges from sections 5, 6 and 7 if they do not sell or issue money orders. Section 5 requires a surety bond, section 6 requires insurance against burglary, etc., and section 7 requires minimum funds to be kept available. These sections do not apply to the plaintiff's business therefore.)

From the record the court finds that:

(1) As a matter of the regular course of its business it does not conduct its business on public streets or highways.

(2) It does not act as a depositary or bailee of other people's money or evidence thereof but uses its own money in cashing checks.

(3) It operates its business independently of any other business.

(4) It issues no tokens to be used in lieu of money.

(5) It generally does not provide an armed guard in addition to a cashier when checks are cashed in plants or its customers' establishments.

(6) There have been several occasions when plaintiff's employees have been held up in plants even though armed guards have been present.

(7) No person has ever suffered any loss as a result of any holdup of the plaintiff's employees.

Considering the restrictions of the amendatory act in relation to the public safety, etc., we find:

(1) There is no need of any restriction of the conduct of the plaintiff's business on public streets or highways since even in the absence of the provision it would have no such right. (*People* v. *Clean Street Company*, 225 Ill. 470.)

(2) There is nothing in the provision for an armed guard to benefit the public. On the contrary the presence of such a guard may insure the exchange of gunfire and the possibility of injury therefrom.

While in the previous case of *People* v. *Thillens*, 400 Ill. 224, there was no [illegible]e concerning the matters akin to the amendatory provisions of the Act of 1951 concerning unfair competition, the nature of the plaintiff's business was before the Supreme Court and the nature of that business has not changed insofar as the record here discloses. Accordingly, what was said there in that regard is appropriate here, and we quote from page 234:

"We are strongly of the opinion that nothing has been alleged, or shown by the evidence, which renders the business of moving money to the premises of a employer by armored truck, and taking up the payroll checks of employees, of such a character as to adversely affect the public health, safety, morals or welfare. As a matter of fact the testimony shows it is highly useful and desireable. Nobody can possibly lose any money by the transaction except the armored service itself, as cash is paid to the owners of the checks upon the premises. Appellant does not handle any other type of checks, drafts, money orders, or evidences of indebtedness. He does not cash checks for anybody other than the employees of the employers with whom he has a contract. Appellant is entrusted with nobody's money. He makes himself a messenger to carry his own money from a bank and pay the employee in distant parts of the city. The appellee has not undertaken to show that any of the

elements required by the exercise of the police power is present in the operations of appellant."

Accordingly, on the question of public safety, security and public welfare, we must conclude that there is nothing in the nature of the plaintiff's business which justifies its regulation and the consequent requirement of obtaining licenses and the payment of license fees, especially since the record discloses it to be the only company materially and adversely affected by the Act.

We have considered carefully all the evidence before us and cannot find anything in this record which leaves us in any doubt as to our conclusions.

We must conclude that as to the plaintiff's business the Act in question has no proper foundation in the police power of the State, is purely arbitrary and hence, insofar as it affects the plaintiff's business, invalid.

Final or Modified Opinion of the Supreme Court of Illinois Filed September 19, 1957, together with the Dissenting Opinions of Justices Davis and Hershey

Docket No. 34315—Agenda 27—March, 1957.

Thillens, Inc., Appellee, v. Lloyd Morey, Auditor of Public Accounts, *et al.*, Appellants.

Mr. JUSTICE BRISTOW delivered the opinion of the court:

The Auditor and Attorney General of the State of Illinois together with the State's Attorney of Cook County, and certain currency exchanges as intervening defendants, have appealed directly to this court from a declaratory judgment of the circuit court of Cook County adjudging that the 1951 amendment to the Community Currency Exchange Act of 1943 (Ill. Rev. Stat. 1951, chap. 16½, pars.

30 *et seq.*) is invalid and unconstitutional as applied to plaintiff's business because it has no proper foundation in the police power of the State.

The constitutionality and validity of a State statute being the principal issue, the appeal properly comes direct to this court.

Plaintiff's complaint prayed a declaratory judgment declaring the 1951 amendment to the Community Currency Exchange Act void and unconstitutional and that the defendant public officials and the individual defendant currency exchanges, as representative of all other currency exchanges, be enjoined from exercising any of the rights, powers or duties conferred upon them respecting the enforcement of the amended act.

The 1951 amendatory act amended the title of the original Community Currency Exchange Act to read: "An Act in relation to the definition, licensing and regulation of Community Currency Exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for violation thereof."

Section .01 of the amendatory act contains a finding and declaration by the General Assembly in reference to ambulatory currency exchanges as follows: "* * * that there has arisen also the ambulatory currency exchange business, as hereinafter defined in Section 1, which has engaged heretofore in unlicensed competition with the licensed community currency exchange business; that it is in the public interest to promote and foster the community currency exchange business and to assure the financial stability thereof; that the operations of the ambulatory currency exchange business have enabled it to appropriate the most profitable function of the community currency exchange business without incurring the expenses of, or subjecting itself to the regulations imposed upon the commu-

nity currency exchange business, and to secure thereby an unfair advantage; that there has resulted therefrom an unfair and ruinous competition to the licensed community currency exchange business; that the nature of the ambulatory currency exchange business is such as to render it hazardous and dangerous to the public safety and security; that the public welfare demands that no ambulatory currency exchange business should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act." Ill. Rev. Stat. 1951, chap. 16½, par. 30.

Section 1 of the amendatory act defines a community currency exchange as being "any person * * * engaged at a fixed and permanent place of business, in the business or service of, and providing facilities for, cashing checks," and defines an ambulatory currency exchange as being "any person * * * engaged in performing any one or more of the foregoing services, at any location other than that of a fixed and permanent place of business of his, their or its own." Section 1 also exempts from the operation of the act any party engaged primarily in a business of transporting for hire bullion, currency, securities, negotiable or non-negotiable articles, jewels or other property of great monetary value, and who, in the course of such business, and only as an incident thereto, cashes checks or other evidences of money directly for, or for the employees of and with the firms of and at a cost only to, the person or firm for whom the party is then actually transporting said property pursuant to a written contract for such transportation, and all incidents thereto. It also exempts any party engaged in the business of selling tangible personal property at retail who, in the course of such business, and only as an incident thereof, cashes checks or other evidences of money.

Section 2 of the amendatory act provides that no community currency exchanges or ambulatory currency ex-

change can engage in business without a license from the Auditor of Public Accounts; that no license shall issue for the conduct of an ambulatory currency exchange on any public street or highway; that an ambulatory currency exchange shall secure a license for the conduct of its business at each and every location served by it as provided in section 4; and that violators of said section shall suffer prescribed penalties.

Section 3 of the act provides what operations a community or ambulatory currency exchange may or may not engage in.

Section 4 provides for written applications for licenses and certain information relative to the applicant's history; that applications for both types of exchanges for a license shall be accompanied by an investigation fee of $25 for the cost of investigating the application; that an annual license fee of $50 shall be paid by a community currency exchange; that an ambulatory currency exchange shall pay an annual license fee of $10 for each and every location served by it; that an approved applicant shall not be required to pay the initial investigation fee of $25 more than once; and that with respect to each location the applicant shall file with the Auditor a letter or memorandum under oath signed by the owners or authorized representative of the place of business where service is to be rendered, containing a statement that such service is desired and that the person signing is authorized so to do.

Section 10 specifies certain qualifying conditions precedent to the issuance of a license and provides that no application shall be denied by the Auditor without notice and hearing and the right of review in accordance with section 22.01 of the act.

Section 14 provides for the payment of annual license fees and the filing of annual license bonds, reports and insurance policies as and if required by the act on or before November 15 annually.

Section 15 provides that no licenses shall be revoked by the Auditor without notice and hearing and right of review in accordance with section 22.01.

Section 16 provides for annual reports to the Auditor and requires that the Auditor shall, at least once a year, inspect the locations served by an ambulatory currency exchange for the purpose of determining whether such exchange is complying with the provisions of the act in such location served, and provides for *subpoena* powers of the Auditor and examination fees with a maximum fee of $20 per day.

Section 19.1 requires an ambulatory currency exchange actively engaged in any place or station on a location licensed under the act and cashing checks other than from an armored vehicle to provide at least one armed guard at each such place in addition to the person cashing checks. Section 19.2 requires that before any license or renewal of license is issued for any location served by an ambulatory currency exchange, such applicant shall file a surety bond in the penal sum of $2000 conditioned that the licensee serving the location shall comply with section 19.1 of the act and shall pay all lawful claims for money or other property loss or bodily injury suffered in the course of and by reason of a holdup at such location that shall occur at the time or times when such licensee failed to comply with said section 19.1, said bond to run to the Auditor for the benefit of any person or persons who establish a lawful claim or claims as aforesaid. The applicant is given an option to file annually in lieu of separate bonds for each location a blanket bond not to exceed $100,000 on the same conditions.

Section 28 provides that if an ambulatory currency exchange does not engage in selling or issuing money orders in its own name, then sections 5, 6, and 7 of the act are not applicable to it.

Section 29 declares the operation of any unlicensed exchange or the unlawful conduct of any licensed exchange constitutes unfair competition with licensed and legally operated currency exchanges doing business in the same community and authorizes such licensed and legally operating currency exchanges doing business in the same community to apply for and obtain an injunction restraining such unfair competition.

Section 30 of the act provides that if any provision of the act is declared unconstitutional the unconstitutionality of such provision shall not invalidate the constitutional provisions of the act.

Plaintiff's complaint in substance alleges that it is an Illinois corporation organized in 1949 for the purpose, among others, of engaging in the business of transporting currency and cashing payroll checks issued to employees in industrial and business concerns, only on the premises of employers issuing such checks, and only pursuant to contract between the company and the employers. The corporation succeeded to the assets and operation of the business previously conducted by the principal stockholder continuously and without interruption from August, 1934, to the date of filing the complaint. The plaintiff's sole business consists of transporting currency belonging to the plaintiff to the premises of business establishments pursuant to contract and the cashing of payroll checks of employees on the premises of the employer. With the exception of two small similar businesses and isolated transactions conducted by Brinks, the plaintiff is the only owner and operator of a payroll check cashing business in Cook County and the only such business of substantial size which will be materially and adversely affected by the amended act. The plaintiff owns and operates a fleet of 19 armored trucks. In most instances payroll checks are cashed at windows from within the armored trucks parked on premises of the em-

ployer. In all cases where checks are otherwise cashed the currency is transported by plaintiff's cashier under the protection of armed guards provided by the plaintiff or the employer. The plaintiff does not engage in any other business nor cash anything other than payroll checks issued by an employer who has contracted for such services. Plaintiff's services are not available to the general public or to the community neighborhood. The plaintiff does not issue money orders, accept money for deposit or for payment of utility bills, nor accept items for collection. All payroll checks are purchased outright by the plaintiff with its own funds. Its sole income is from a nominal service charge based upon the size of the check cashed. Plaintiff cashes checks for more than 75,000 employees weekly, averaging in excess of $4,750,000 a week. During the fiscal year ending March 1, 1951, plaintiff cashed 3,874,194 checks in exchange for $234,877,000. Any loss which occurs is borne by the plaintiff and no loss can accrue to any others. A very substantial part of plaintiff's business is conducted in the industrial and outskirt areas where there is no practical or convenient means by which payroll checks can be cashed except for plaintiff's services. The principal competitors of plaintiff's business are taverns. During the 17 years of operation by plaintiff and its predecessor no person had been injured or damaged as the result of any holdup or other criminal action directed at any of plaintiff's employees. The business of plaintiff and its value would be destroyed in the event of the suspension of its services for even a short period of time. The complaint alleges that the 1951 amendment to the Community Currency Exchange Act is unconstitutional as a violation of section 2 of article II of the Illinois constitution providing that no person shall be deprived of life, liberty or property without due process of law, and that said amendatory act is an unreasonable, discriminatory and capricious exercise of the police power insofar as it relates to plaintiff's business.

After a temporary injunctional order was affirmed by the Appellate Court in *Thillens, Inc.* v. *Cooper*, 345 Ill. App. 145, the defendants filed answers which, in addition to denying the unconstitutionality of the amendatory act and plaintiff's right to an injunction, specifically denied the following facts alleged in the complaint: that plaintiff's sole business consisted of the transporting of currency belonging to the plaintiff to premises of business establishments pursuant to contract and the cashing of payroll checks of employees on the premises of the employers; that any loss which occurs is borne by the plaintiff and can accrue to no others; that a very substantial part of plaintiff's business is conducted in industrial and outskirt areas where there is no practical or convenient means by which payroll checks can be cashed except by plaintiff's services; that the principal competitors of plaintiff's business are taverns; that during 17 years of operation no person was injured or damaged as the result of any holdup or other criminal action directed at any of plaintiff's employees; and that the business of plaintiff and its value would be destroyed in the event of the suspension of its services for even a short period of time. As to the remaining allegations of the complaint the answer merely stated that the defendants had no knowledge sufficient to form a belief as to the truth thereof.

Thereafter the trial court granted plaintiff's motion for judgment on the pleadings and entered a declaratory judgment granting the relief prayed, basing its decision primarily upon the opinion of this court entered in the case of *People ex rel. Barrett* v. *Thillens*, 400 Ill. 224. Such declaratory judgment entered on the pleadings by the trial court was reversed by this court in *Thillens, Inc.* v. *Hodge*, 2 Ill. 2d 45, and the cause was remanded with directions to overrule the motion for judgment on the pleadings and to require the introduction of evidence in order to resolve the factual issues raised by the pleadings before deciding the legal questions presented.

On remandment the trial court heard extensive and voluminous testimony and evidence and entered its judgment declaring the amended act unconstitutional as applied to plaintiff, from which this appeal is taken. Such judgment made the following specific findings among others: "The plaintiff engaged in the business of cashing payroll checks on the premises of various employers, there being instances, however, of the cashing of payroll checks outside such premises and on the public streets while plaintiff was engaged in promotional services;" "payroll checks are cashed from tables in plants in some instances, in cages in plants in other instances, and from the windows of armored trucks on the premises of plants in other instances;" "in most instances where the check cashing is not done from the armored truck it is done by an armed employee of Thillens with no additional guard assigned;" "in 17 years of operation no customer of plaintiff or its predecessor has been injured or damaged as a result of a holdup, albeit there have been holdups in one or two of which an employee of plaintiff was injured. During the same period of time there have been intermittent holdups of the Community Currency Exchanges;" "there is immediate competition between Thillens and some currency exchanges but there is no evidence that that competition is ruinous;" "the rates charged for cashing checks by plaintiff were uniformly less than the rates charged by currency exchange operators;" "there was evidence of competition by Thillens at four community currency exchanges out of 607 licensed exchanges;" "the plaintiff is in unlicensed competition with the Community Currency Exchange business;" "the operation of the plaintiff's being limited to the cashing of checks only concerns itself with what is the most profitable function of the community currency exchange business;" "there has been no unfair or ruinous competition to the licensed community exchange business, and during the years of the plaintiff's operations the community currency exchange business

has from year to year increased in size. Neither the industry nor any individual exchange has been rendered unprofitable as a result of the plaintiff's operation;" "plaintiff failed to prove its allegation that its principal competition was from taverns located in the vicinity of the various industrial plants at which plaintiff makes its stops;" "plaintiff generally does not provide an armed guard in addition to an armed cashier when checks are cashed in plants at its customers' establishments;" "there have been several occasions when plaintiff's employees have been held up at plants even though armed guards have been present;" "there is no need of any restriction on the conduct of plaintiff's business on public streets or highways;" "there is nothing in the provision for an armed guard to benefit the public. On the contrary the presence of such a guard may insure the exchange of gunfire and the possibility of injury therefrom;" "there is nothing in the nature of the plaintiff's business which justifies its regulation and the requirement of the statute of obtaining licenses and the payment of license fees;" "plaintiff is the only company materially and adversely affected by the act." In a memorandum opinion attached to the declaratory judgment the trial court relied principally upon and quoted extensively from the prior opinions of this court in *Thillens, Inc.* v. *Hodge*, 2 Ill. 2d 45, and *People ex rel. Barrett* v. *Thillens*, 400 Ill. 224.

The contentions by appellants on this appeal that the amendatory act is constitutional may be summarized in substance as follows: That the legislative judgment is conclusive unless clearly shown to be arbitrary, capricious and unrelated to the public good; that the trial court's finding that the plaintiff's unlicensed competition was not unfair or ruinous was contrary to the uncontradicted evidence, and the legislation is a constitutional inhibition of "unfair and ruinous competition" which the legislature has found and declared to exist; that the trial court's finding that the amendment exceeded the legislature's police power was

contrary to the uncontradicted evidence, which established the dangerous and hazardous nature of plaintiff's business.

The substance of plaintiff's contentions in support of the declaratory judgment may be summarized as follows: The reasonableness and propriety of regulation and its application is a judicial and not a legislative function; plaintiff's competition is neither unfair nor ruinous; plaintiff's business is neither dangerous nor hazardous; the designation of a business by the legislature as being affected with the public interest does not in fact make it so; and the statute is void as an unlawful classification, a denial of equal protection of the laws, an unwarranted discrimination, and an invalid exercise of police power.

The opinion of this court in *Thillens, Inc.* v. *Hodge*, 2 Ill. 2d 45, points out the nature of the decision of this court in *People ex rel. Barrett* v. *Thillens*, 400 Ill. 224, distinguishes the issues there presented from those issues now before the court, and states in a rather comprehensive manner the standards and criteria to be followed in resolving issues such as are now presented to the court.

As stated in the case of *Thillens, Inc.* v. *Hodge*, all presumptions are in favor of the constitutionality of legislation once it becomes the law of the State, and all reasonable doubts must be resolved in its favor. The party attacking the validity of a statute has the burden of proving that it is clearly arbitrary and has no foundation in the police power for its existence. Where the reasonableness of the legislation is fairly debatable the courts will not interfere with the legislative judgment and will not substitute their judgment for that of the legislative department. Such principle does not foreclose the courts from exercising their judicial function, and it is true that the reasonableness and propriety of regulation and its application must be decided by the court from the facts and circumstances in evidence. (*Midland Electric Coal Corp.* v. *County of Knox*, 1 Ill. 2d 200.) However, the trial court has no power to judge in

accordance with its judgment on conflicting evidence but its duty is only to decide whether the question is fairly debatable. If fairly debatable it should not investigate further. (*Gadlin* v. *Auditor of Public Accounts*, 414 Ill. 89.) It makes no difference that substantial evidence on both sides may be in conflict or that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not for the courts to arbitrate in such contradictions of evidence. (*Stewart* v. *Brady*, 300 Ill. 425; *Rams-Hvad Co.* v. *City of Des Plaines*, 9 Ill. 2d 326; *City of West Frankfort* v. *Fullop*, 6 Ill. 2d 609.) From the findings of fact specifically made by the trial court that the plaintiff cashed checks on the public streets while engaged in promotional services, that there have been holdups in which individuals have been injured, that there is no armed guard other than the armed cashier himself when cashing checks outside of an armored truck, that there is competition between the plaintiff and currency exchanges and that plaintiff charges uniformly less than the rates charged by currency exchange operators, that plaintiff's business concerns itself only with the most profitable function of community currency exchange business, and from other facts in evidence whereby it appears that the plaintiff itself recognizes the element of public danger from its operations by carrying very large insurance policies indemnifying the public against loss from holdup, and by the extensive protection furnished its own employees and its property, the use of armored cars, extensive firearm training, and advance notification of police as to its routes and cashing operations, there seems to be ample evidence from which the legislature could reasonably conclude that the plaintiff's operation directly affected the public safety and the use of public highways. From the facts before the court it seems amply clear that the legislature was not unreasonable, arbitrary or capricious in determining that the nature of the plaintiff's business was such as to render it hazardous and

dangerous to the public safety and security, warranting police regulations.

As to the question of whether legislative protection of one business from competition by another is valid in and of itself, we are not called upon to consider. As announced in *People ex rel. Barrett* v. *Thillens*, 400 Ill. 224, it is a firmly settled constitutional principle that every citizen is guaranteed the right to engage in any lawful, useful and harmless business or trade, and it is not within the constitutional authority of the State legislature, in the exercise of police power, to interfere with the rights of the individual to carry on a legitimate business when no interest in the public safety, welfare or morals is damaged or threatened. Although the decision in *People ex rel. Barrett* v. *Thillens*, 400 Ill. 224, was unquestionably correct, yet, in the instant case we have a situation of a business which damages or threatens to damage the public safety. In *Gadlin* v. *Auditor of Public Accounts*, 414 Ill. 89, this court upheld the constitutionality of section 4.1 of the Currency Exchange Act, also adopted in 1951, limiting the issuance of community exchange licenses to those which would promote the advantage of the community, and said that the unrestricted issuance of licenses in a community to the point of saturation would tend to decrease net earnings to the point of insolvency of one or more exchanges with the inevitable result of losses to the public. By the same token and same reasoning the legislature would have the same right to regulate the unrestricted cashing of payroll checks where the unlicensed competition emanates from an admittedly dangerous and hazardous business.

A large discretion is necessarily vested in the legislature to determine not only what the interests of public safety and welfare require but what measures are necessary to secure such interests. (*Zelney* v. *Murphy*, 387 Ill. 492.) Whether the enactment is wise or unwise; whether it is based on sound economic theory; whether it is the best

means to achieve the desired results, and whether the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature, and the honest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance. *People* v. *Saltis*, 328 Ill. 494; *Stewart* v. *Brady*, 300 Ill. 425.

Plaintiff further argues that the amendatory act in question is unconstitutional and void because the exemptions in section 1 of the act hereinbefore set forth are unlawful classifications and deny the equal protection of the law to plaintiff. The exemptions referred to are those exempting from the act (a) those engaged primarily in the transportation for hire of currency, *etc.*, who as an incident thereto cash checks, *etc.*, with the funds of, and at a cost only to the employer, pursuant to written contract; and (b) those in the retail business, who only as an incident thereto, cash checks, *etc.*

The general legal principles to be applied to this particular question are rather well settled. The equal protection clause goes no further than the invidious discrimination. (*Williamson* v. *Lee Optical of Okla., Inc.*, 348 U.S. 483, 99 L. ed. 563, 75 S. Ct. 461.) The court in *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 55 L. ed. 369, 31 S. Ct. 337, succinctly stated the rules for testing a discrimination as follows:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any

state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." The foregoing principles are of equal application in the State of Illinois. (*Stewart* v. *Brady*, 300 Ill. 425; *Krebs* v. *Board of Trustees*, 410 Ill. 435; *Union Cemetery Ass'n* v. *Cooper*, 414 Ill. 23.) This court has uniformly recognized that a class cannot be created by arbitrary declaration of the law-making powers and that only those classifications are valid which are based upon reasonable grounds of distinction with reference to the object of the legislation. (*Wedesweiler* v. *Brundage*, 297 Ill. 328; *Berry* v. *City of Chicago*, 320 Ill. 536; *Chicago Park District* v. *Canfield*, 382 Ill. 278.) At the same time, this court further recognizes that the legislature is not bound to extend its regulation to all cases which it might possibly reach. It may confine its restrictions to those classes where the need is deemed to be the clearest. *Stewart* v. *Brady*, 300 Ill. 425; *People* v. *Saitis*, 328 Ill. 494; *Baim* v. *Fleck*, 406 Ill. 193.

It is apparent from the act in question that the purpose of the legislature in adopting the act was to protect the public when dealing with institutions, both ambulatory and otherwise, primarily engaged in the business of furnishing check cashing and currency exchange services. From what has heretofore been noted, the legislature was not unreasonable or arbitrary in determining that such business required regulation by the State under its police power to protect the public from certain evils. The exemptions complained of refer to businesses not primarily engaged in currency exchange or check cashing, but refer to businesses whose primary business is something different, *viz.*, transportation of another's valuables for hire, or retail sales. In each type of exempted business it is recognized that incidentally checks may be cashed. Under the applicable rules, how-

ever, we must conclude that the legislature exempted from the application of the act certain businesses with different characteristics predicated upon a reasonable belief that the evils at which the statute was directed did not exist in sufficient degree in the exempted classes to warrant regulation. From the facts introduced in evidence, we cannot say the legislature acted arbitrarily or unreasonably in providing the exemptions attacked.

A similar contention was made in *McDougall* v. *Lueder*, 389 Ill. 141, with reference to the exclusion of check cashing by retail stores. Such contention was overruled by this court in that opinion, *sub silentio*, the opinion being devoted to other issues presented. Among such other issues was the question whether or not the specific exemption from the statute by name of the Western Union, Postal Telegraph Company and the American Express Company constituted an unlawful classification and denial of equal protection. In the *McDougall case* we held such exemption constitutional. Since the submission of this case to the court, the United States Supreme Court in *Morey* v. *Doud*, 1 L. ed. 2d 1485 (June 24, 1957) has held such exemption unconstitutional as violating the equal protection clause. In so holding, they declined to remit the cause to the Illinois courts for a determination whether such exemption could be severed from the act under its severability clause, but held that this court in the *McDougall case* ruled that such exemption could not be severed. Such conclusion of the United States Supreme Court is premised on *dicta* contained in the opinion by this court in the *McDougall case* that "The General Assembly would surely never have passed the act if they had thought that the said companies would be made subject to its rules and regulations." Since this court there held that the exemption complained of was constitutional, no question of severability of such clause was presented for decision, the language referred to was unnecessary and was clearly *dicta*, and the case constitutes no decision by this court that such clause

was not severable. Since the question of severability is clearly recognized as a question of State law in the *Morey case, Dorcky* v. *Kansas*, 264 U.S. 286, 68 L. ed. 686, 44 S. Ct. 323; and *Chas. Wolff Parking Co.* v. *Court of Industrial Relations*, 267 U.S. 552, 69 L. ed. 785, 45 S. Ct. 441, that question remains unresolved by this court. Subsequent to the announcement of the United States Supreme Court decision in *Morey* v. *Doud* on June 24, 1957, the General Assembly of this State has adopted and the Governor has signed a bill purportedly amending the Currency Exchange Act by eliminating the exemption of the American Express Company money orders therefrom. (70th General Assembly, H.B. 1031.) Without passing on the validity or effect of such purported amendment, we must accept such amendatory act as a positive and irrebuttable indication that the Illinois legislature would have passed the Currency Exchange Act even though the named companies were subject to its application; notwithstanding this court's prior *dicta* in the *McDougall case*. Such being the fact, such exemption clause should be considered severable (*Myers* v. *Krajefska*, 8 Ill. 2d 322) with no effect on the validity of the remainder of the Currency Exchange Act even though such clause is invalid under the United States Supreme Court decision in the *Morey case*.

In our opinion the legislature was acting within the scope of its constitutional limitations in adopting the legislation here challenged, and this court cannot judicially state that it was acting in an arbitrary, capricious or unreasonable manner. Consequently, the judgment of the trial court will be reversed.

Judgment reversed.

Mr. Justice Schaefer took no part in the consideration or decision of this case.

Mr. JUSTICE DAVIS, dissenting:

If an examination of the provisions of this amendatory act raised only questions of the wisdom of its expressed social or economic policy, or of its choice of methods to implement such policy, I would concur with the court and defer to such legislative determination. However, the facts of record concerning the plaintiff's business, and the impact of this enactment thereon, require that this court exercise its time-honored judicial function of reviewing legislative enactments to determine whether they are arbitrary, capricious and unreasonable. (*Midland Electric Coal Corp.* v. *County of Knox*, 1 Ill. 2d 200; *Giebelhausen* v. *Daley*, 407 Ill. 25; *McDougall* v. *Lueder*, 389 Ill. 141; *Marbury* v. *Madison*, 1 Cranch 137.) Under our form of government, the legislative, executive, and judicial branches all serve as guardians of our liberties, and each branch has the duty to check and balance the unauthorized act of the other. Our constitution did not harness a three-horse team to work in unison, but rather, gave each branch a separate task with the expectation that where one branch errs, the other will, within constitutional limitations, repair such error.

A complete reading of the act before us reveals a singular purpose to deprive plaintiff of its present competitive position. The legislative finding and declaration of policy, in the amendment, boldly announces a plan to protect community currency exchanges from competition by ambulatory currency exchanges. But the legislature did not attempt to achieve this purpose by the regulation of fees or charges for the services rendered. Rather, it sought to burden the plaintiff by the imposition of multitudinous license fees, investigation fees, examination fees, surety bonds, armed guard, supervisory and report and record requirements. It is inescapable that these requirements are not designed to protect the public, but to increase plaintiff's cost and facility of doing business. The legis-

lature is without authority to act as a handicapper in the race for commercial success, as it has here done.

The court grounded its opinion solely on the legislative determination that the operations of the plaintiff are dangerous to public safety. The record, in my opinion, reveals something quite different; it conclusively discloses that in seventeen years of operation, the general public has suffered neither physical injury, nor economic harm. But even assuming that the activity of plaintiff in using its own money to cash payroll checks is hazardous *per se*, a conclusion I believe unreasonable, the supervision of the Auditor of Public Accounts, the plethora of fees and charges, and the burdensome requirements of supervision, bonds, records and reports have no conceivable relation to this hazard. Nor does the requirement of an armed guard, without heed to whether plaintiff is cashing checks for $100 or $100,000, have such relation.

It is naive to regard this amendment as anything more than an ill-considered legislative attempt to place a millstone of regulation around the neck of a legitimate business, under the guise of the exercise of the police power. This court still gives lip service to its decision in *People ex rel. Barrett* v. *Thillens*, 400 Ill. 224, as "obviously correct," but the present decision reduces the statements of constitutional law there announced to pious and hollow generalities, which will fall before the art of any skillful legislative draftsman. I would here reaffirm the more salutory doctrine that "If it is claimed that the statute or ordinance is referable to the police power, the court must be able to see that it tends, in some degree, toward the prevention of offenses or the preservation of the public health, morals, safety or welfare. It must be apparent that some such end is the one actually intended and that there is some connection between the provisions of the law and such purpose. If it is manifest that the statute or ordinance has no such object, but, under the guise of a police regula-

tion, is an invasion of the property rights of the individual, it is the duty of the court to declare it void." (*People ex rel. Barrett* v. *Thillens*, 400 Ill. 224, 235; also see: *Midland Coal Corp.* v. *County of Knox*, 1 Ill. 2d 200; *People* v. *Carolene Products Co.*, 345 Ill. 166; *People* v. *Wilson*, 249 Ill. 195.) The validity of the Community Currency Exchange Act as applied to community exchanges was based on various fiduciary activities in which the plaintiff does not engage, such as handling other people's money, issuing drafts, selling money orders, acting as bailee in payment of bills, taking other people's money and purchasing paper. (*McDougall* v. *Lueder*, 389 Ill. 141.) While extensive regulations of such activities may be warranted, the same regulation of the plaintiff, which merely cashes checks with it own funds, without any fiduciary relationship with the public, is clearly unreasonable. Cf. *People ex rel. Barrett* v. *Thillens*, 400 Ill. 224.

The amendatory act has the further vice of lack of uniformity in exempting express companies from like regulation. While such classification was justified in *McDougall* v. *Lueder*, 389 Ill. 141, it can have no rational basis in the amendatory act under consideration, the validity of which is sustained solely on the ground that the business is hazardous to public safety. If the plaintiff's activities are hazardous to public safety, then similar activities of the express companies would have an equal element of hazard, and their exemption from the onerous provisions of the act would render it unconstitutional. (*Berry* v. *City of Chicago*, 320 Ill. 536, 542; *Wedeswciler* v. *Brundage*, 297 Ill. 228, 236; *Millett* v. *People*, 117 Ill. 294, 301 and 302.) The act discriminates against the plaintiff and excepts express companies performing similar services from its operation without the justification of genuinely different characteristics in the business involved, and in so doing violates the equal

protection clause of both the State and Federal constitutions. *Morey* v. *Doud*, —— U.S. ——, 1 L. ed. 2d 1485.

I therefore voice my dissent to an opinion which tends to vest in the legislature the unfettered power, by finding and declaration, to destroy harmless competition under the guise of police regulation.

Mr Justice Hershey concurs in the foregoing dissenting opinion.

APPENDIX B

HOUSE BILL No. 1031

[Enacted June 24, 1957, Approved July 9, 1957]

For an Act to amend Section 1 of "An Act in relation to the definition, licensing and regulation of community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof", approved June 30, 1943, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 1 of "An Act in relation to the definition, licensing and regulation of community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof", approved June 30, 1943, as amended is amended to read as follows:

Sec. 1. For the purposes of this Act:

"Community currency exchange" means any person, firm, association, partnership or corporation, except banks incorporated under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged at a fixed and permanent place of business, in the business or service of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money acceptable to such community currency exchange, for a fee or service charge or other consideration, or engaged in the business of selling or issuing money orders under his or their or its name, or any other money orders (other than United States Post Office money orders (*American Express Company money orders*), Postal Telegraph Company money orders, or Western Union Telegraph Company money orders), or engaged in both such businesses, or engaged in performing any one or more of the foregoing services.

"Ambulatory Currency Exchange" means any person, firm, association, partnership or corporation, except banks organized under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged in one or both of the foregoing businesses, or engaged in performing any one or more of the foregoing services, at any location other than that of a fixed and permanent place of business of his, their or its own.

"Auditor" means the Auditor of Public Accounts.

Nothing in this Act shall be held to apply to any person, firm, association, partnership, or corporation who is engaged primarily in the business of transporting for hire, bullion, currency, securities, negotiable or non-negotiable documents, jewels or other property of great monetary value and who in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money directly for,

or for the employees of and with the funds of and at a cost only to, the person, firm, association, partnership or corporation for whom he or it is then actually transporting such bullion, currency, securities, negotiable or non-negotiable documents, jewels, or other property of great monetary value, pursuant to a written contract for such transportation and all incidents thereof, nor shall it apply to any person, firm, association, partnership or corporation engaged in the business of selling tangible personal property at retail who, in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

Copy of Statute Here Involved

Illinois Revised Statutes 1951
Chapter 16½, Sections 30 to 56.3.

"AN ACT *in relation to the definition, licensing and regulation of community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof.*" (Approved June 30, 1943, in force October 1, 1943, as amended.)

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section .01. The General Assembly has found and declares: that the community currency exchange business, as hereinafter defined in Section 1, has become so widespread since the bank holiday in 1933, and so extensively and intimately integrated with the financial institutions of this State that it is affected with a public interest and should be licensed and regulated as a business affecting

the convenience, general welfare, and economic interest of the people of this State;

that no community currency exchange should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act;

that the number of community currency exchanges should be limited in accordance with the needs of the communities they are to serve, and in accordance with the provisions of this Act;

that there has arisen also the ambulatory currency exchange business, as hereinafter defined in Section 1, which has engaged heretofore in unlicensed competition with the licensed community currency exchange business;

that it is in the public interest to promote and foster the community currency exchange business and to assure the financial stability thereof;

that the operations of the ambulatory currency exchange business have enabled it to appropriate the most profitable function of the community currency exchange business without incurring the expenses of, or subjecting itself to the regulations imposed upon the community currency exchange business, and to secure thereby an unfair advantage, and that there has resulted therefrom an unfair and ruinous competition to the licensed community currency exchange business;

that the nature of the ambulatory currency exchange business is such as to render it hazardous and dangerous to the public safety and security;

that the public welfare demands that no ambulatory currency exchange business should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act.

Section 1. For the purposes of this Act: "Community currency exchange" means any person, firm, association,

partnership or corporation, except banks incorporated under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged at a fixed and permanent place of business, in the business or service of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money acceptable to such community currency exchange, for a fee or service charge or other consideration, or engaged in the business of selling or issuing money orders under his or their or its name, or any other money orders (other than United States Post Office money orders, American Express Company money orders, Postal Telegraph Company money orders, or Western Union Telegraph Company money orders), or engaged in both such businesses, or engaged in performing any one or more of the foregoing services.

"Ambulatory Currency Exchange" means any person, firm, association, partnership or corporation, except banks organized under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged in one or both of the foregoing businesses, or engaged in performing any one or more of the foregoing services, at any location other than that of a fixed and permanent place of business of his, their or its own.

"Auditor" means the Auditor of Public Accounts.

Nothing in this Act shall be held to apply to any person, firm, association, partnership, or corporation who is engaged primarily in the business of transporting for hire, bullion, currency, securities, negotiable or non-negotiable documents, jewels or other property of great monetary value and who in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money directly for, or for the employees of and with the funds of and at a cost only to, the person, firm, association, partnership or corporation for whom he or it is then actually transporting such

bullion, currency, securities, negotiable or non-negotiable documents, jewels, or other property of great monetary value, pursuant to a written contract for such transportation and all incidents thereof, nor shall it apply to any person, firm, association, partnership or corporation engaged in the business of selling tangible personal property at retail who, in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

Sec. 2. No person, firm, association, partnership or corporation shall engage in the business of a community currency exchange or in the business of an ambulatory currency exchange without first securing a license to do so from the Auditor.

Any person, firm, association, partnership or corporation issued a license to do so by the Auditor shall have authority to operate a community currency exchange or an ambulatory currency exchange, as defined in Section 1 hereof.

No license shall be issued for the conduct of an ambulatory currency exchange on any public street or highway. An ambulatory currency exchange shall be required to and shall secure a license or licenses for the conduct of its business at each and every location served by it, as provided in Section 4 hereof. No license issued for the conduct of its business at one location shall authorize the conduct of its business at any other location.

Any person, firm, association, partnership or corporation that violates this section shall be fined not less than $500.00 nor more than $1000.00 or imprisoned in the county jail for not more than one year, or both, and the Attorney General or the State's Attorney of the county in which the violation occurs shall file a complaint in the Circuit Court of the county to restrain the violation.

Sec. 3. No community or ambulatory currency exchange shall be permitted to accept money or evidences

of money as a deposit to be returned to the depositor or upon the depositor's order; and no community or ambulatory currency exchange shall be permitted to act as bailee or agent for persons, firms, partnerships, associations or corporations to hold money or evidences thereof or the proceeds therefrom for the use and benefit of the owners thereof, and deliver such money or proceeds of evidence of money upon request and direction of such owner or owners; provided, that nothing contained herein shall prevent a community or an ambulatory currency exchange from obtaining state automobile and city vehicle licenses for a fee or service charge, or from rendering a photostat service, or from rendering a notary service either by the proprietor of the currency exchange or any one of its employees, authorized by the State of Illinois to act as a notary public, or from selling travelers cheques obtained by the currency exchange from a banking institution under a trust receipt, or from issuing money orders or from accepting for payment local utility bills; provided, further, that in accepting any such payment the community or ambulatory currency exchange shall not be deemed to act as agent for the local utility, nor shall such community or ambulatory currency exchange be authorized to receipt for such payment in the name, or on behalf, of such utility.

Sec. 3.1. Nothing in this Act shall prevent a currency exchange from rendering State or Federal income tax service; nor shall the rendering of such service be considered a violation of this Act if such service be rendered either by the proprietor or any of his employees.

Sec. 4. Application for such license shall be in writing under oath and in the form prescribed and furnished by the Auditor. Each application shall contain the following:

(a) The full name and address (both of residence and place of business) of the applicant, and if the applicant is a partnership or association, of every member thereof,

and the name and business address if the applicant is a corporation;

(b) The county and municipality, with street and number, if any, where the community currency exchange is to be conducted, if the application is for a community currency exchange license;

(c) If the application is for an ambulatory currency exchange license, the names and addresses of the plants or businesses at the location or locations to be served by it; and

(d) The applicant's occupation or profession: a detailed statement of his business experience for the ten years immediately preceding his application; a detailed statement of his finances; his present or previous connection with any other currency exchange; whether he has ever been involved in any civil or criminal litigation, and the material facts pertaining thereto; whether he has ever been committed to any penal institution or admitted to an institution for the care and treatment of mentally ill persons; and the nature of applicant's occupancy of the premises to be licensed where the application is for a community currency exchange license. If the applicant is a partnership, the information specified herein shall be required of each partner.. If the applicant is a corporation, the said information shall be required of each officer and director thereof.

Such application shall be accompanied by a fee of $25.00 which fee shall be for the cost of investigating the applicant. When the application for a community currency exchange license has been approved by the Auditor and the applicant so advised, an additional sum of $50.00 as an annual license fee for a period terminating on the last day of the current calendar year shall be paid to the Auditor by the applicant; provided, that the license fee for an applicant applying for such a license after July 1st of any year shall be $25.00 for the balance of such year.

When the application for an ambulatory currency exchange license has been approved by the Auditor, and such applicant so advised, such applicant shall pay an annual license fee of $100.00 for each and every location to be served by such applicant; provided that such license fee for an approved applicant applying for such a license after July 1st of any year shall be $5.00 for the balance of such year for each and every location to be served by such applicant. An approved applicant shall not be required to pay the initial investigation fee of $25.00 more than once. Such an approved applicant, when applying for a license with respect to a particular location, shall file with the Auditor, at the time of filing an application, a letter or memorandum, which shall be in writing and under oath, signed by the owner or authorized representative of the place of business where service is to be rendered; such letter or memorandum shall contain a statement that such service is desired, and that the person signing the same is authorized so to do.

Sec. 4.1. Upon receipt of an application for a license for a community currency exchange, the Auditor shall investigate the need of the community for the establishment of a community currency exchange at the location specified in the application.

"Community" as used in this Act, means a locality where there may or can be available to the people thereof the services of a community currency exchange reasonably accessible to them. If the issuance of a license to engage in the community currency exchange business at the location specified will not promote the convenience and advantage of the community in which the business of the applicant is proposed to be conducted, then the application shall be denied.

Sec. 4.2. Whensoever the ownership of any currency exchange, theretofore, licensed under the provisions of this Act, shall be held or contained in any estate subject to the

control and supervision of any Administrator, Executor, Guardian or Conservator appointed, approved or qualified by any Court of the State of Illinois having jurisdiction so to do, such Administrator, Executor, Guardian, or Conservator, may, upon the entry of an order by such Court granting leave to continue the operation of such currency exchange, apply to the Auditor of Public Accounts for a license under the provisions of this Act. When any such Administrator, Executor, Guardian, or Conservator shall apply for a currency exchange license pursuant to the provisions of this Section, and shall otherwise fully comply with all of the provisions of this Act relating to the application for a currency exchange license, the Auditor may issue to such applicant a currency exchange license. Any currency exchange license theretofore issued to a currency exchange, for which an application for a license shall be sought under the provisions of this Section, if not previously surrendered, lapsed, or revoked, shall be surrendered, revoked or otherwise terminated before a license shall be issued pursuant to application made therefor under this Section.

Sec. 5. Before any license shall be issued to a community currency exchange the applicant shall file annually with and have approved by the Auditor a surety bond, issued by a bonding company or insurance company authorized to do business in this State in the principal sum of $3,000.00. Such bond shall run to the Auditor and shall be for the benefit of any creditors of such currency exchange for any liability incurred by the currency exchange on any money orders issued or sold by the currency exchange and for any liability incurred by the currency exchange for any sum or sums due to any payee or endorsee of any check, draft or money order left with the currency exchange for collection, and for any liability incurred by the currency exchange in connection with the rendering of any of the services referred to in Section 3 of this Act.

If after the expiration of one year from the issuance of the license the Auditor shall determine that the average amount of such liability during said year has exceeded the sum of $4,000.00 and has been less than $5,000.00, the Auditor shall require the licensee to furnish a bond for the ensuing year to be approved by the Auditor in the principal sum of $4,000.00. If such average amount is in excess of $5,000.00 the bond shall be for an additional principal sum of $1,000.00 for each $1,000.00 or fraction thereof in excess of the original $5,000.00; however, the maximum amount of such bond shall not exceed the principal sum of $25,000.00.

Sec. 6. Every applicant for a license hereunder shall, after his application for a license has been approved, file with and have approved by the Auditor, a policy or policies of insurance issued by an insurance company or indemnity company authorized to do business under the laws of this State, which shall insure the applicant against loss by burglary, larceny, robbery, forgery or embezzlement in a principal sum as hereinafter provided; if the average amount of cash and liquid funds to be kept on hand in the office of the community currency exchange during the year will not be in excess of $2,500, the policy or policies shall be in the principal sum of $2,500. If such average amount will be in excess of $2,500, the policy or policies shall be for an additional principal sum of $500 for each $1,000 or fraction thereof such excess over the original $2,500, provided that the maximum amount of such insurance shall in no event exceed the principal sum of $35,000.00. From time to time the Auditor may determine the amount of cash and liquid funds on hand in the office of any community currency exchange and shall require the licensee to submit additional policies if the same are determined to be necessary in accordance with the requirements of this section.

Any such policy or policies, with respect to forgery, may carry a condition that the community currency exchange assumes the first $50 of each claim thereunder.

Sec. 7. Each community currency exchange shall have, at all times, a minimum sum of $3,000 of its own cash funds available for the uses and purposes of its business and said minimum sum shall be exclusive of and in addition to funds received for exchange or transfer; and in addition thereto each such licensee shall at all times have on hand an amount of liquid funds sufficient to pay on demand all outstanding money orders issued by it.

In the event a receiver is appointed in accordance with Section 15.1 of this Act, and the Auditor determines that the business of the currency exchange should be liquidated, and if it shall appear that the said minimum sum was not on hand or available at the time of the appointment of the receiver, then the receiver shall have the right to recover in any court of competent jurisdiction from the owner or owners of such currency exchange, or from the stockholders and directors thereof if such currency exchange was operated by a corporation, said sum or that part thereof which was not on hand or available at the time of the appointment of such receiver. Nothing contained in this section shall limit or impair the liability of any bonding or insurance company on any bond or insurance policy relating to such community currency exchange issued pursuant to the requirements of this Act, nor shall anything contained herein limit or impair such other rights or remedies as the receiver may otherwise have at law or in equity.

Sec. 8. A community or an ambulatory currency exchange shall not be conducted as a department of another business. It must be an entity, financed and conducted as a separate business unit. This shall not prevent a community or an ambulatory currency exchange from leasing a part of the premises of another business for the conduct of this business on the same premises; provided, that no

community currency exchange shall be conducted on the same premises with a business whose chief source of revenue is derived from the sale of alcoholic liquor for consumption on the premises; provided, further, that no community currency exchange hereafter licensed for the first time shall share any room with any other business, trade or profession nor shall it occupy any room from which there is direct access to a room occupied by any other business, trade or profession.

Sec. 9. No community or ambulatory currency exchange shall issue tokens to be used in lieu of money for the purchase of goods or services from any enterprise.

Sec. 10. The applicant, and its officers and directors, if a corporation, shall be vouched for by two reputable citizens of this State setting forth that the individual mentioned is (a) personally known to them to be trustworthy and reputable, (b) that he has business experience qualifying him to competently conduct, operate, own or become associated with a currency exchange, (c) that he has a good business reputation and is worthy of a license. Thereafter, the Auditor shall, upon approval of the application filed with him, issue to the applicant qualifying under this Act, a license to operate a currency exchange. If it is a license for a community currency exchange, the same shall be valid only at the place of business specified in the application. If it is a license for an ambulatory currency exchange, it shall entitle the applicant to operate only at the location or locations specified in the application, provided the applicant shall secure separate and additional licenses for each of such locations. Such licenses shall remain in full force and effect, until they are surrendered by the licensee, or revoked, or expire, as herein provided. If the Auditor shall not so approve, he shall not issue such license or licenses and shall notify the applicant of such denial, retaining the $25.00 investigation fee to cover the cost of investigating the applicant.

The auditor shall approve or deny every application hereunder within ninety days from the filing thereof; except that in respect to an application by an approved ambulatory currency exchange for a license with regard to a particular location to be served by it, the same shall be approved or denied within twenty days from the filing thereof.

No application shall be denied unless the applicant has had notice of a hearing on said application and an opportunity to be heard thereon. If the application is denied, the Auditor shall, within twenty days thereafter prepare and keep on file in his office a written order of denial thereof, which shall contain his findings with respect thereto and the reasons supporting the denial, and shall send by United States mail a copy thereof to the applicant at the address set forth in the application, within five days after the filing of such order. A review of any such decision may be had as provided in Section 22.01 of this Act.

Sec. 10.1. For the purposes of this Act, the Auditor, and the hearing officer, as hereinafter provided, shall have power to require by subpoena the attendance and testimony of witnesses, and the production of all documentary evidence relating to any matter under hearing pursuant to this Act, and shall issue such subpoenas at the request of any interested party. The hearing officer may sign subpoenas in the name of the Auditor.

The Auditor may, in his discretion, direct that any hearing pursuant to this Act, shall be held before a competent and qualified agent of the Auditor, whom the Auditor shall designate as the hearing officer in such matters. The Auditor, and the hearing officer, are hereby empowered to, and shall, administer oaths and affirmations to all witnesses appearing before them. The hearing officer, upon the conclusion of the hearing before him, shall certify the evidence to the Auditor.

Any Circuit Court of this State, within the jurisdiction of which such hearing is carried on, may, in case of contumacy, or refusal of a witness to obey a subpoena, issue an order requiring such witness to appear before the Auditor, or the hearing officer, or to produce documentary evidence, or to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Sec. 11. Such license, if issued for a community currency exchange, shall state the name of the licensee and the address at which the business is to be conducted. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable. If issued for an ambulatory currency exchange, it shall so state, and shall state the name and office address of the licensee, and the name and address of the location or locations to be served by the licensee, and shall not be transferable and assignable.

Sec. 12. If the Auditor shall find at any time that the bond is insecure or exhausted or otherwise doubtful, an additional bond in like amount to be approved by the Auditor shall be filed by the licensee within thirty (30) days after written demand therefor upon the licensee by the Auditor.

Sec. 13. No more than one place of business shall be maintained under the same license, but the Auditor may issue more than one license to the same licensee upon compliance with the provisions of this Act governing an original issuance of a license, for each new license.

Whenever a licensee shall wish to change the name or place of business as originally set forth in his license, he shall give written notice thereof to the Auditor and if the change is approved by the Auditor he shall attach to the license, in writing, a rider stating the new name or the new address or location of the community currency exchange.

Every application for a change of location of a community currency exchange shall be treated by the Auditor with respect to the approval or disapproval of the proposed location, in the same manner as is otherwise provided in this A . for the treatment of proposed locations as contained in original applications for community currency exchange licenses; and if any fact or condition then exists with respect to the application for change of location, which fact or condition would otherwise authorize denial of an original application for a community currency exchange license because of the proposed location, then such application for change of location shall not be approved.

Sec. 13.1. Whenever two or more licensees shall desire to consolidate their places of business, they shall make application for such consolidation to the Auditor upon a form provided by him. This application shall state: (a) the name to be adopted and the location at which the business shall be located, which name and location shall be the same as one of the consolidating licensees; (b) that the owners, or all partners, or all stockholders, as the case may be, of the licensees involved in the contemplated consolidation, have approved the application; (c) a certification by the secretary, if any of the licensees be corporations, that the contemplated consolidation has been approved by all of the stockholders at a properly convened stockholders meeting; (d) other relevant information the Auditor may require. Simultaneously with the approval of the application by the Auditor, the licensee or licensees who will cease doing business shall: (a) surrender their license or licenses to the Auditor; (b) transfer all of their assets and liabilities to the licensee continuing to operate by virtue of the application; (c) apply to the Secretary of State, if they be corporations, for surrender of their corporate charter in accordance with the provisions of "The Business Corporation Act", filed July 13, 1933, as amended.

An application for consolidation shall be approved or rejected by the Auditor within 30 days after receipt by him of such application and supporting documents required thereunder.

Such consolidation shall not affect suits pending in which the surrendering licensees are parties; nor shall such consolidation affect causes of action nor the rights of persons in particular; nor shall suits brought against such licensees in their former names be abated for that cause.

Nothing contained herein shall limit or prohibit any action or remedy available to a licensee or to the Auditor under Sections 15, 15.1 or 15.2 of this Act.

Sec. 14. Every licensee shall, on or before November 15, pay to the Auditor the annual license fee or fees for the next succeeding calendar year and shall at the same time file with the Auditor the annual report required by Section 16 of this Act, and the annual bond or bonds, and the insurance policy or policies as and if required by this Act. The annual license fee for each community currency exchange shall be $50.00. The annual license fee for each location served by an ambulatory currency exchange shall be $10.00.

Sec. 15. The Auditor may, upon ten (10) days notice to the licensee by United States mail directed to the licensee at the address set forth in the license, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard prior to such action, revoke any license issued hereunder if he shall find that:

(a) The licensee has failed to pay the annual license fee or to maintain in effect the required bond or bonds or insurance policy or policies or to comply with any order, decision, or finding of the Auditor made pursuant to this Act; or that

(b) The licensee has violated any provision of this Act or any regulation or direction made by the Auditor under this Act; or that

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Auditor in refusing the issuance of the license; or that

(d) The licensee has not operated the currency exchange licensed, for a period of sixty consecutive days, unless the licensee was prevented from operating during such period by reason of events or acts beyond the licensee's control.

The Auditor may revoke only the particular license or licenses for particular places of business or locations with respect to which grounds for revocation may occur or exist, or if he shall find that such grounds for revocation are of general application to all places of business or locations, or to more than one place of business or location operated by such licensee, he may revoke all of the licenses issued to such licensee or such number of licenses to which such grounds apply, as the case may be.

A licensee may surrender any license by delivering to the Auditor written notice that he, they or it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender, or affect the liability on his, their or its bond or bonds, or his, their or its policy or policies of insurance, required by this Act, or entitle such licensee to a return of any part of the annual license fee or fees.

Every license issued hereunder shall remain in force until the same shall expire, or shall have been surrendered or revoked in accordance with this Act, but the Auditor may on his own motion, issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have war-

ranted the Auditor in refusing originally the issuance of such license under this Act.

No license shall be revoked until the licensee has had notice of a hearing thereon and an opportunity to be heard. When any license is so revoked, the Auditor shall within twenty (20) days thereafter, prepare and keep on file in his office a written order or decision of revocation which shall contain his findings with respect thereto and the reasons supporting the revocation and shall send by United States mail a copy thereof to the licensee at the address set forth in the license within five (5) days after the filing in his office of such order, finding or decision. A review of any such order, finding or decision may be had as provided in Section 22.01 of this Act.

Sec. 15.1. If the Auditor determines that any licensee is insolvent or is violating this Act, he shall appoint a receiver, who shall, under his direction, for the purpose of the receivership, take possession of and title to the books, records and assets of every description of said community currency exchange. The Auditor shall require of the receiver such security as he deems proper and, upon appointment of the receiver, shall have published, once each week for four consecutive weeks in a newspaper having a general circulation in the community, a notice calling on all persons who have claims against the community currency exchange, to present them to the receiver.

Within ten days after the receiver takes possession of the property, the licensee may apply to the Circuit Court of Sangamon County to enjoin further proceedings in the premises.

The receiver may operate the community currency exchange until the Auditor determines that possession should be restored to the licensee or that the business should be liquidated. If the Auditor determines that the business should be liquidated he shall direct the Attorney General

to file a bill in the Circuit Court of the county in which such community currency exchange is located, in the name of the People of the State of Illinois, for the orderly liquidation and dissolution of the community currency exchange and for an injunction restraining the licensee or the officers and directors thereof from continuing the operation of said community currency exchange.

The receiver shall, thirty days from the day the Auditor determines that the business should be liquidated, file with the Auditor and with the clerk of such court as may have charge of the liquidation, a correct list of all creditors who have not presented their claims. The list shall show the amount of the claim after allowing all just credits, deductions and set-offs as shown by the books of the currency exchange. These claims shall be deemed proven unless objections are filed by some interested party within the time fixed by the Auditor or court that has charge of the liquidation.

The Auditor may make a ratable dividend of the moneys collected by the receiver on all claims that have been proved to his satisfaction or adjudicated in a court of competent jurisdiction whenever moneys are available for distribution.

All unclaimed dividends shall be deposited with the Auditor to be paid out by him when proper claims therefor are presented to the Auditor, and the Auditor shall pay the same out of such sums or funds so deposited with him. After one year from the final dissolution of the currency exchange, the Auditor shall make a pro-rata distribution thereof to those claimants who have accepted dividends until such claim or claims are paid in full, and if any of said monies shall then remain in his hands, the Auditor shall distribute same pro-rata to the owner, owners or stockholders of the currency exchange. The Auditor shall deduct, from the funds so deposited with him the expenses of distributing same.

Upon the order of a court of competent jurisdiction of the county wherein the community currency exchange is located, the receiver may sell or compound any bad or doubtful debt, and on like order may sell the personal property of the community currency exchange on such terms as the court approves. The receiver shall succeed to whatever rights or remedies the unsecured creditors of the currency exchange may have against the owner or owners, operators, stockholders, directors, or officers thereof, arising out of their claims aginst the currency exchange; provided, however, that nothing herein contained shall prevent such creditors from filing their claims in the liquidation proceeding. The receiver may enforce such rights or remedies in any court of competent jurisdiction.

At the close of the receivership, it shall be the duty of the receiver to turn over to the Auditor all books of account and ledgers of such currency exchange for preservation. All records of such receiverships heretofore and hereafter received by the said Auditor shall be held by him for a period of two years after the close of the receivership and at the termination of said two year period may then be destroyed.

All expenses of the receivership, including reasonable receiver's, solicitor's and attorney's fees, approved by the Auditor, shall be paid out of the assets of the community currency exchange; and all expenses of any preliminary or other examinations into the condition of the community currency exchange or receivership, and all expenses incident to the possession and control of any property or records of the community currency exchange incurred by the Auditor shall be paid out of the assets of the community currency exchange. The foregoing expenses shall be paid prior to and ahead of all claims.

Upon the filing of a complaint by the Attorney General for the orderly liquidation and dissolution of a community currency exchange, as herein provided, all pending

suits and actions upon unsecured claims against such currency exchange shall abate; provided, however, that nothing contained herein shall prevent such claimants from filing their claims in the liquidation proceeding. In the event a suit or an action is instituted or maintained by the receiver on any bond or policy of insurance issued pursuant to the requirements of this Act, the bonding or insurance company sued, shall not have the right to interpose or maintain any counterclaim based upon subrogation, or upon any express or implied agreement of, or right to, indemnity or exoneration, or upon any other express or implied agreement with, or right against, the currency exchange. Nothing herein contained shall prevent such bonding or insurance company from filing such claim in the liquidation proceeding.

Sec. 15.2. No community currency exchange shall determine its affairs and close up its business unless it shall first deposit with the Auditor an amount of money equal to the whole of its debts, liabilities and lawful demands against it, including the costs and expenses of this proceeding, and shall surrender to the Auditor its community currency exchange license, and shall file with the Auditor a statement of termination signed by the licensee of such community currency exchange, containing a pronouncement of intent to close up its business and liquidate its liabilities, and also containing a sworn list itemizing in full all such debts, liabilities and lawful demands against it. Corporate licensees shall attach to, and make a part of such statement of termination, a copy of a resolution providing for the determination and closing up of the licensee's affairs, certified by the secretary of such licensee and duly adopted at a shareholders' meeting by the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting. Upon the filing with the Auditor of a statement of termination the Auditor shall cause notice thereof to be published once each week for

three consecutive weeks in a public newspaper of general circulation published in the city or village where such community currency exchange is located, and if no newspaper shall be there published, then in a public newspaper of general circulation nearest to said city or village; and such publication shall give notice that the debts, liabilities and lawful demands against such community currency exchange will be redeemed by the Auditor on demand in writing made by the owner thereof, at any time within three years from the date of first publication. After the expiration of such three year period, the Auditor shall return to the person or persons designated in the statement of termination to receive such repayment and in the proportion therein specified, any balance of money then remaining in his possession, if any there be, after first deducting therefrom all unpaid costs and expenses incurred in connection with this proceeding. The Auditor shall receive for his services, exclusive of costs and expenses, two per cent of any amount up to $5,000.00, and one per cent of any amount in excess of $5,000.00, deposited with him hereunder by any one community currency exchange. Nothing contained herein shall affect or impair the liability of any bonding or insurance company on any bond or insurance policy issued under this Act relating to such community currency exchange.

Sec. 16. Each licensee shall annually, on or before the fifteenth day of November, file a report with the Auditor for the fiscal year period from October 1st through September 30th (which shall be used only for the official purposes of the Auditor) giving such relevant information as the Auditor may reasonably require concerning, and for the purpose of examining, the business and operations during the preceding fiscal year period of each licensed currency exchange conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Auditor and the Auditor may at any time and shall at least once in each year investigate the

currency exchange business of any licensee and of every person, partnership, association and corporation who or which shall be engaged in the business of operating a currency exchange. For that purpose, the Auditor shall have free access to the offices and places of business and to such records of all such persons, firms, partnerships, associations and corporations and to the officers and directors thereof that shall relate to such currency exchange business. The Auditor may at any time, and shall at least, once a year, inspect the locations served by an ambulatory currency exchange, for the purpose of determining whether such currency exchange is complying with the provisions of this Act at each location served. The Auditor may require by subpoena the attendance of and examine under oath all persons whose testimony he may require relative to such business, and in such cases the Auditor, or any qualified representative of the Auditor whom the Auditor may designate, may administer oaths to all such persons called as witnesses, and the Auditor, or any such qualified representative of the Auditor, may conduct such examinations, and there shall be paid to the Auditor for each such examination a fee of $20.00 for each day or part thereof for each qualified representative designated and required to conduct the examination; provided, however, that in the case of an ambulatory currency exchange, such fee shall not be increased by reason of the number of locations served by it.

Sec. 17. Every licensee shall keep and use in his business such books, accounts and records as will enable the Auditor to determine whether such licensee is complying with the provisions of this Act and with the rules, regulation and directions made by the Auditor hereunder.

Sec. 18. The applicant for a community currency exchange license shall have a permanent address as evidenced by a lease of at least six months duration or other suitable evidence of permanency, and the license issued, pursuant

to the application shall be valid only at that address or any new address approved by the Auditor.

Sec. 19. The Auditor may make and enforce such reasonable, relevant regulations, directions, orders decisions and findings as may be necessary for the execution and enforcement of this Act and the purposes sought to be attained herein. All such regulations, directions, orders, decisions and findings shall be filed and entered by the Auditor in an indexed permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. All regulations and directions, which are of a general character, shall be printed and copies thereof mailed to all licensees within ten (10) days after filing as aforesaid. Copies of all findings, orders and decisions shall be mailed to the parties affected thereby by United States mail within five (5) days of such filing.

Sec. 19.1. Whenever an ambulatory currency exchange shall be actively engaged at any place or station on a location licensed under this Act in the cashing of checks other than from within an armored vehicle, such currency exchange shall provide at least one armed guard at each such place or station in addition to the person or persons cashing checks.

Sec. 19.2. Before any license or renewal of license shall be issued for any location served by an ambulatory currency exchange, the applicant thereof shall file with and have approved by the Auditor a surety bond for each such location, issued by a bonding or insurance company, licensed to do business in this State, in the penal sum of $2,000.00. The bond shall be conditioned that the licensee serving the location shall comply with Section 19.1 of this Act and shall pay all lawful claims for money or other property loss, or bodily injury, suffered in the course and by reason of a holdup at such location, that shall occur at the time or times when said licensee failed to comply with said Section 19.1. Such bond shall run to the Audi-

tor and shall inure to the benefit of any person or persons who shall establish a lawful claim or claims as aforesaid. The applicant shall have the right, at his, their, or its option, to file in lieu of the bond or bonds required by this section, a blanket surety bond, which he, they, or it shall have approved by the Auditor, issued by a bonding or insurance company, licensed to do business in this State, covering all the locations served and to be served by such applicant, in a penal sum of not to exceed $100,000.00 conditioned and payable as aforesaid, and specifying that the liability thereunder for each location shall be limited to $2,000.00.

Sec. 20. Every person having taken an oath in any proceeding or matter wherein an oath is required by this Act, who shall swear wilfully, corruptly or falsely in a matter material to the issue or point in question, or shall suborn any other person to swear as aforesaid, shall be guilty of perjury or subornation of perjury, as the case may be.

Sec. 21. Except as otherwise provided for in this Act, whenever the Auditor is required to give notice to any applicant or licensee, such requirement shall be complied with if, within the time fixed herein, such notice shall be enclosed in an envelope plainly addressed to such applicant or licensee, as the case may be, at the address set forth in the application or license, as the case may be, United States postage fully prepaid, and deposited, registered, in the United States mail.

Sec. 22. Repealed by Act approved June 9, 1949, effective January 1, 1950.

Sec. 22.01. All final administrative decisions of the Auditor hereunder shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act", approved May 8, 1945, and all amendments and modifications thereof, and the rules adopted pursuant thereto. The

term "administrative decision" is defined as in Section 1 of the "Administrative Review Act."

Sec. 22.02. Appeals from all final orders and judgments entered by a court in review of any final administrative decision of the Auditor hereunder may be taken directly to the Supreme Court by either party to the action in accordance with the provisions of the "Civil Practice Act" relating to appeals, and all existing and future amendments and modifications thereof and the rules adopted pursuant thereto.

Sec. 23. If any licensee, or agent or employee of a licensee, fraudulently takes and secretes any money, note, bill, bond or other property belonging to another and in the possession and custody of such licensee as agent or otherwise, he shall be guilty of larceny and punished accordingly.

Sec. 24. Any person, firm, association, partnership or corporation who or which shall violate any provision of this Act for which no other penalty is herein prescribed shall, upon conviction, be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), and each violation shall constitute a separate offense.

Sec. 25. Any community currency exchange in existence upon the date of the passage of this Act shall be approved by the Auditor as to location, if all other requirements set forth in this Act shall have been complied with.

Sec. 26. The sum of one hundred thousand dollars ($100,000.00), or so much thereof as may be necessary, is appropriated to the Auditor of Public Accounts for the purpose of administering the provisions of this Act.

Sec. 27. Nothing contained in this Act shall be construed so as to limit the power of municipalities, to license and tax community currency exchanges, and to regulate their location and operation in a manner not inconsistent with this Act.

Sec. 28. Unless an ambulatory currency exchange shall engage in the business of selling or issuing money orders under his, their or its name, or any money orders other than those excepted in Section 1 of this Act, Sections 5, 6 and 7 of this Act shall not be applicable to it. Otherwise, said sections shall apply to it, if it shall engage in such business.

Sec. 29. The operation of any unlicensed community or ambulatory currency exchange, or the unlawful conduct or operation of any licensed community or ambulatory currency exchange, is hereby declared to constitute unfair competition with licensed and legally operated currency exchanges doing business in the same community. Any licensee operating legally under this Act in the same community shall have the right to apply to any court of competent jurisdiction for and obtain an injunction restraining such unfair competition.

Sec. 30. If any part or provision of this Act shall be declared unconstitutional, the unconstitutionality of such part or provision shall not invalidate the constitutional provisions of this Act.

APPENDIX C

STATE OF ILLINOIS
EXECUTIVE DEPARTMENT
SPRINGFIELD, August 17, 1949.

To the Honorable, the Secretary of State:

I herewith file in your office, without my approval, House Bill No. 142, entitled "An Act to amend Sections 1, 2, 3, 4, 4.1, 8, 9, 10, 11, 14, 16 and 18 and the title of 'An Act in relation to the regulation of community currency exchanges, and the operators and employees thereof, and to make an appropriation therefor', approved June 30, 1943, as amended, and to add Sections .01, 19.1, 19.2, 23, 29 and 30 thereto." The adjournment of the General Assembly having prevented the return of this Bill to the House in which it originated within ten days (Sundays excepted)

after its presentation to me, the same is filed in your office with my objections. I veto and withhold my approval from this Bill for the following reasons:

This Bill extends the provisions of the Community Currency Exchange Act to "ambulatory currency exchanges" which are defined to include any persons or organizations, except banks, engaged, at other than a fixed location, in performing any of certain services which may be rendered by a community currency exchange. Among other things the Bill requires each ambulatory exchange to obtain a separate license and to pay an annual license fee of $10 for each location served by it; requires the ambulatory exchange to have at least one armed guard, in addition to the person cashing checks, at each location where checks are cashed outside an armored truck; requires the State Auditor to make at least an annual inspection, at the expense of the operator, of each location served; and requires the operator to file with the State Auditor a surety bond in the amount of $2000 per location served (or a blanket bond in the amount of $100,000), conditioned that the operator shall pay all lawful claims for property loss or bodily injury suffered in the course of a holdup when checks are being cashed outside an armored truck.

There seems to be no doubt but that this Bill represents a further step in the efforts of the community currency exchange operators to eliminate or reduce competition from concerns which cash employees pay checks for a charge on the premises of the employer. The declarations of policy set out in this Bill include the following:

> "that the operations of the ambulatory currency exchange business have enabled it to appropriate the most profitable function of the community currency exchange business [i.e. check cashing] without incurring the expenses of, or subjecting itself to the regulations imposed upon, the community currency exchange business, and to secure thereby an unfair advantage; that there has resulted therefrom an unfair and ruinous competition to the licensed community exchange business;"

In my opinion the protection of limited business interests from competition without compensating public benefit exceeds the legitimate bounds of governmental regulation. It is argued here that the competitive advantage results from freedom by ambulatory exchanges from licensing and regulatory provisions to which community exchanges are subject. However, it is not proper or constitutional to make these provisions likewise applicable to ambulatory exchanges unless they serve some reasonable public purpose.

I am advised that the sole business of existing ambulatory exchanges is the cashing of employees' pay checks on the premises of employers. They do not issue money orders, or act as agents in payment of utility bills or render various other services, as do the community exchanges. They merely exchange their own cash for pay checks and no relationship of trust or confidence is created. Under these circumstances, I am at a loss to see what there is in the transaction that can appropriately be supervised by the Auditor or what public purpose is served by the multiplication of license fees. Likewise, I do not see what obligations to customers are created so as to justify the unusual surety bond requirements. If the theory is that the possession of currency for cashing pay checks creates an invitation to crime so as to justify control, then this Bill is discriminatory since an employer who cashes his own checks is not regulated, and a community exchange, which may also be subject to holdup, is not required to have an armed guard. If such a theory were sound then each person who carried a thick wallet or wore a valuable diamond could be required to employ an armed guard and to undertake to compensate any passerby injured in the event of a holdup.

For the foregoing reasons, I veto and withhold my approval from House Bill No. 142.

Respectfully,

ADLAI E. STEVENSON, *Governor.*

OFFICE OF THE GOVERNOR
SPRINGFIELD

Adlai E. Stevenson, Governor

June 27, 1951

To the Honorable,
The Secretary of State
Springfield, Illinois

Sir:

I herewith file in your office House Bill No. 437 entitled:

"An Act to amend Sections 1, 2, 3, 4, 8, 9, 10, 11, 14, 15, 16 and 18 and the title of 'An Act in relation to the regulations of community currency exchanges, and the operators and employees thereof, and to make an appropriation therefor', approved June 30, 1943, as amended, and to add Sections .01, 19.1, 19.2, 28, 29 and 30 thereto."

This bill was received by me from the General Assembly on June 14, 1951, and I have permitted it to become law without my approval.

This bill amends the act relating to the regulation of community currency exchanges by bringing within its purview the operators of what are known as ambulatory currency exchanges. It is similar to, although not identical with, House Bill No. 142 enacted by the Sixty-sixth General Assembly and vetoed by me for the reasons stated in my message of August 17, 1949.

The question presented by this bill is the same as that involved in every legislative decision to bring a particular business enterprise or activity under public regulation, namely, does it bear such relation to the public safety or welfare as to warrant the particular regulation sought to be imposed? Phrased another way, is the activity of such a nature as to make it reasonable for the police power

of the state to be exerted against it in the manner proposed?

Under our system of government, this is a question to be determined in the first instance by the representatives of the people assembled in the legislature, but it is a determination which is always subject to review by the courts. So far as the executive is concerned, I have expressed my views once on this particular regulation in my veto message of the bill enacted at the last session. Although there are differences between this bill and the earlier one which make this one somewhat less onerous, I am still of the opinion that the proposed regulation is motivated more by restraint of competition than by need for regulation. And, even assuming the need for some regulation to protect the public, I fail to find in this bill a soundly conceived plan for adapting the manner of regulation to the need.

However, the choice of both the object and the method of regulation in the public interest remains primarily in the realm of opinion with the primary determination to be made by the legislature, subject to court review. Inasmuch as the legislature has for the second consecutive time, and by an overwhelming vote, concluded that the proposed regulation is in the public interest, I have no disposition to interfere further.

Respectfully,

ADLAI E. STEVENSON
Governor

APPENDIX D

HOUSE BILL No. 1264

70th G. A. H. B. 1264—1957

For an Act to add Section 4.3 to "An Act in relation to the definition, licensing, and regulation of community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof", approved June 30, 1943, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 4.3 is added to "An Act in relation to the definition, licensing, and regulation of community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof", approved June 30, 1943, as amended, the added section to read as follows:

Sec. 4.3. Upon receipt of an application from an ambulatory currency exchange for the conduct of its business at a location to be served by it, the Auditor shall investigate the need of the community for the establishment of such business at the location specified in the application. If the issuance of a license to engage in such business at the location specified will not promote the convenience and advantage of the community in which such business is proposed to be conducted, then the application shall be denied; provided, however, that any location regularly served by such ambulatory currency exchange upon the date of the passage of this section, shall be approved by the Auditor as to location, if all other requirements set forth in the Act, to which this section is added, shall have been complied with.

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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 696

THILLENS, INC., A CORPORATION,
Appellant,

vs.

LLOYD MOREY, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS; LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS; JOHN GUTKNECHT, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS, *Appellees*, and

HAROLD A. ARNOLD, DOING BUSINESS AS LAKEVIEW CURRENCY EXCHANGE; RALPH BARR AND LOUIS WOLFBERG, COPARTNERS DOING BUSINESS AS MARSHALL SQUARE CURRENCY EXCHANGE; JOHN F. BOGIE, DOING BUSINESS AS RAVENSWOOD CURRENCY EXCHANGE; AND SIDNEY SORKIN, DOING BUSINESS AS CERTIFIED CURRENCY EXCHANGE,
Appellees.

Appeal from the Supreme Court of Illinois.

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

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Chicago 1, Illinois
and
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Attorneys for Appellant.

"The legislature is without authority to act as a handicapper in the race for commercial success, as it here has done."

• • • • •

"It is naive to regard this amendment as anything more than an ill-considered legislative attempt to place a millstone of regulation around the neck of a legitimate business, under the guise of the exercise of the police power."

(Opinion of the dissenting justices, *Thillens* v. *Morey*, 11 Ill. 2d 579, 598, 599, Jurisdictional Statement, Page 38a.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

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THILLENS, INC., A CORPORATION,
Appellant,

vs.

LLOYD MOREY, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS; LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS; JOHN GUTKNECHT, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS, *Appellees,* and

HAROLD A. ARNOLD, DOING BUSINESS AS LAKEVIEW CURRENCY EXCHANGE; RALPH BARR AND LOUIS WOLFBERG, COPARTNERS DOING BUSINESS AS MARSHALL SQUARE CURRENCY EXCHANGE; JOHN F. BOGIE, DOING BUSINESS AS RAVENSWOOD CURRENCY EXCHANGE; AND SIDNEY SORKIN, DOING BUSINESS AS CERTIFIED CURRENCY EXCHANGE,
Appellees.

Appeal from the Supreme Court of Illinois.

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

This suit is based on the premise that the Fourteenth Amendment to the Federal Constitution requires that courts be as zealous to protect the property rights of citizens, including the right to engage in a lawful business enterprise, as to protect their other civil rights.

The matter here before this Court is a suit for a declaratory judgment that the Community Currency Exchange Act of 1943, as amended in 1951, be declared invalid and unconstitutional and therefore unenforceable as applied to plaintiff's check cashing business.

This case involves the same statute reviewed by this Court in *Morey* v. *Doud*, 354 U. S. 457. Probable jurisdiction should be noted herein, because a full briefing and argument of this case would show a singular example of statutory discrimination of the type condemned by this Court in that case.

The case focuses attention on one of the growing problems of our age: the power of a group of businessmen and a responsive legislature to destroy or seriously injure the business of one citizen for the sole purpose of aiding his competitors. Legislation of this character may well be a more serious danger to free competition and the valuable property rights of citizens, than the more traditional methods of unfair competition.

The amended act here questioned is a particularly invidious and deceptive example of unfair competition by legislation. The intervening defendant community currency exchange operators engage in two principal types of operation: (a) the sale of money orders, and (b) the cashing of checks. The act was conceived to restrain plaintiff's check-cashing competition. Its provisions have not the remotest relation to any other hazard than the allegedly "ruinous competition" which the currency exchange operators think that Thillens poses to them. The result of enforcement of the act would be serious injury to, or destruction of, his valuable business.

I. THAT THE OBJECT OF THE LEGISLATION HERE UNDER REVIEW IS DISCRIMINATION AGAINST THE BUSINESS OF THE PLAINTIFF IS BOLDLY STATED IN THE PREAMBLE OF THE ACT.

Concerning the "community" [stationary] currency exchange operators, the act "finds":

> "that it is in the public interest to *promote* and *foster* the community currency exchange business and *to assure the financial stability thereof.*" (Italics ours.)
>
> "that the number of currency exchanges should be limited in accordance with the needs of the community they are to serve, and in accordance with the provisions of this act." (Jurisdictional Statement, Page 43a.)

The statutory direction that the number of stationary exchanges in each community be limited in accordance with the needs of the community (Sec. 4.1) and that the financial stability of each exchange be assured has been interpreted by the Supreme Court of Illinois as permitting the State Auditor to set up a system of territory allocation, under which established exchanges in each community are extended an umbrella of monopolistic protection against new entrants, *Gadlin* v. *Auditor of Public Accounts*, 414 Ill. 89.

In contradistinction, however, plaintiff's business (for which the term "ambulatory currency exchange" was invented), is not to be "promoted" and "fostered" and "assured financial stability". It is declared to be a public hazard, and ruinous and unfair competition to the community currency exchanges. The Act "finds":

> "that the nature of the ambulatory currency exchange business is such as to render it hazardous and dangerous to the public safety and security;" (Jurisdictional Statement, Page 43a).

The public hazard is specified in the following paragraph:

> "that the operations of the ambulatory currency exchange business have enabled it to appropriate the most profitable function of the community currency exchange business without incurring the expenses of, or subjecting itself to the regulations imposed upon the community currency exchange business, and to secure thereby an unfair advantage; that there has resulted therefrom an unfair and ruinous competition to the licensed community currency exchange business;" (Jurisdictional Statement, Page 43a).

II. THAT THE PURPOSE OF THIS LEGISLATION IS AND THE RESULT OF ITS ENFORCEMENT WILL BE INJURY TO PLAINTIFF'S VALUABLE PROPERTY RIGHTS HAS BEEN RECOGNIZED BY THE TRIAL COURT, BY THE DISSENTING JUSTICES IN THE SUPREME COURT OF ILLINOIS, AND BY THE GOVERNOR OF ILLINOIS ON BOTH OCCASIONS WHEN THIS BILL WAS PRESENTED TO HIM FOR HIS SIGNATURE.

In their opinion, which should be read in its entirety (Jurisdictional Statement, Pages 37a-40a), the dissenting justices stated:

> "A complete reading of the act before us reveals a singular purpose to deprive plaintiff of its present competitive position. The legislative finding and declaration of policy, in the amendment, boldly announces a plan to protect community currency exchanges from competition by ambulatory currency exchanges. But the legislature did not attempt to achieve this purpose by the regulation of fees or charges for the services rendered. Rather, it sought to burden the plaintiff by the imposition of multitudinous license fees, investigation fees, examination fees, surety bonds, armed guard, supervisory and report and record requirements. It is inescapable that these requirements are not designed to protect the public, but to increase plaintiff's cost and facility of doing business. The

legislature is without authority to act as a handicapper in the race for commercial success, as it has here done."

• • • • •

"It is naive to regard this amendment as anything more than an ill-considered legislative attempt to place a millstone of regulation around the neck of a legitimate business, under the guise of the exercise of the police power." (Jurisdictional Statement, Pages 37a, 38a.)

The trial court stated:

"• • • We must conclude that as to the plaintiff's business the Act in question has no proper foundation in the police power of the State, is purely arbitrary and hence, insofar as it affects the plaintiff's business, invalid." (Jurisdictional Statement, p. 20a.)

Governor Stevenson in his 1949 message stated concerning this legislation:

"There seems to be no doubt but that this Bill represents a further step in the efforts of the community currency exchange operators to eliminate or reduce competition from concerns which cash employees pay checks for a charge on the premises of the employer."

"In my opinion the protection of limited business interests from competition without compensating public benefit exceeds the legitimate bounds of governmental regulation. It is argued here that the competitive advantage results from freedom by ambulatory exchanges from licensing and regulatory provisions to which community exchanges are subject. However, it is not proper or constitutional to make these provisions likewise applicable to ambulatory exchanges unless they serve some reasonable public purpose."

"I am advised that the sole business of existing ambulatory exchanges is the cashing of employees' pay checks on the premises of employers. They do not issue money orders, or act as agents in payment of utility bills or render various other services, as do the community exchanges. They merely exchange their own cash for pay checks and no relationship of trust

or confidence is created. Under these circumstances, I am at a loss to see what there is in the transaction that can appropriately be supervised by the Auditor or what public purpose is served by the multiplication of license fees. Likewise, I do not see what obligations to customers are created so as to justify the unusual surety bond requirements. If the theory is that the possession of currency for cashing pay checks creates an invitation to crime so as to justify control, then this Bill is discriminatory since an employer who cashes his own checks is not regulated, and a community exchange, which may also be subject to holdup, is not required to have an armed guard. If such a theory were sound then each person who carried a thick wallet or wore a valuable diamond could be required to employ an armed guard and to undertake to compensate any passerby injured in the event of a holdup."

"For the foregoing reasons, I veto and withhold my approval from House Bill No. 142."

Respectfully,

ADLAI E. STEVENSON,
Governor."

(Jurisdictional Statement, pp. 68, 69a.)

In 1951 the Governor stated as follows:

"Under our system of government, this is a question to be determined in the first instance by the representatives of the people assembled in the legislature, *but it is a determination which is always subject to review by the courts.* So far as the executive is concerned, I have expressed my views once on this particular regulation in my veto message of the bill enacted at the last session. Although there are differences between this bill and the earlier one which make this one somewhat less onerous, *I am still of the opinion that the proposed regulation is motivated more by restraint of competition than by need for regulation.* And, even assuming the need for some regula-

tion to protect the public, I fail to find in this bill a a soundly conceived plan for adapting the manner of regulation to the need." (Italics ours.) (Jurisdictional Statement, p. 71a.)

III. DEFENDANTS' BRIEFS ADMIT THAT THE OBJECT OF THIS ACT IS INJURY TO PLAINTIFF'S BUSINESS.

Perhaps the most revealing page in all of the documents filed herein by defendants is page six of the motion of Mr. Soble and former Justice Thompson on behalf of the intervenors. It shows the real nature of the conflict of interest between the exchange operators and the plaintiff, which resulted in this legislation. It describes the supposed evils which the currency exchange operators intended to remedy by this Act. The matters therein discussed are detailed in this section of the brief.

The original means by which the community currency exchange operators hoped to eliminate plaintiff's lower-priced competition was the "fixed place of business requirement" (Sec. 1). Said operators hoped to eliminate plaintiff's mobile check cashing competition by thus outlawing it entirely. This hope was dashed in *People* v. *Thillens*, 400 Ill. 224, 236, in which it was held that the Currency Exchange Act was not intended to apply to plaintiff's business, and that if it did, it was probably unconstitutional.

The Intervening Currency Exchange operators have not altered their intentions toward plaintiff. As stated at page 6 of Intervenors' motion:

> "Thus, when *People* v. *Thillens* was decided by the Supreme Court, it became clear that the 1943 Act was but a *mirage* for the *distressed community exchanges* which alone were subject to the high costs of regulation, and that it placed in the hands of the armored car services a *sword of tremendous advantage* with which to cut down their competition."

The "sword of tremendous advantage" retained by Thillens was its continued existence.

That Thillens' continued existence is really what the exchange operators are attempting to eliminate is also shown by the following paragraph appearing on page 6 of Intervenors' Brief:

> "Four exchange operators testified that their check cashing activities were almost paralyzed when appellant moved in. One of them reduced his rates to meet appellant's. When he tried to raise his rates back again, he lost out to appellant. (Abst. 607, 610, 430-432, 622, 623, 379-381, 331-336, 347-349; Rec. 1957-1960, 1984, 1582-1589, 2041-2046, 1333-1334, 1046-1069, 1165-1175.)"

The extensive abstract references above show the importance of this point to the operators. Competition was the complaint of intervenor's many witnesses. Having restrained competition amongst themselves by the licensing provision (Sec. 4.1), referred to in section I of this brief, they sought similar protection against competition by Thillens.

And, of sourse, the operators raise the age-old cry of all would-be monopolists: that their competitor, plaintiff, is underpricing them.

> "Freed from regulation, appellant was enabled to *so seriously underprice* the community exchanges, which are prohibited from engaging in business except at a fixed place of business, that while appellant's business grew from nothing in 1934 to a volume of 3,800,000 checks ($235,000,000) in 1951 * * *, the check cashing operations of the community currency exchanges slumped badly * * *" (Italics ours) (Intervenors' Brief, p. 6).

IV. OPERATION OF THE STATUTE WOULD RESULT IN INVIDIOUS DISCRIMINATION AGAINST PLAINTIFF.

Under the 1951 Act Thillens is required (Sec. 2 & 10) to secure a separate and additional license for each of the 1,500 or more locations now served (1958). The 1951 Act did not specify standards to guide the Auditor in granting or revoking licenses but did require that the plaintiff obtain from each employer or duly authorized representative thereof a separate statement that the service is desired (Sec. 4). In the closing days of its 1957 session the legislature amended the Act to add to the above the requirement (Sec. 4.3) of a certificate of convenience and necessity for the issuance of an "ambulatory" license.

> "Upon receipt of an application from an ambulatory currency exchange for the conduct of its business at a location to be served by it, the Auditor of Public Accounts and after June 30, 1958, the Director of Financial Institutions shall investigate the need of the community for the establishment of such business at the location specified in the application. If the issuance of a license to engage in such business at the location specified will not promote the convenience and advantage of the community in which such business is proposed to be conducted, then the application shall be denied; provided, however, that any location regularly served by such ambulatory currency exchange before July 1, 1957, shall be approved by the Auditor of Public Accounts and after June 30, 1958, by the Director of Financial Institutions as to location, if all other requirements set forth in the act, to which this section is added, shall have been complied with by September 30, 1957." (Ill. Rev. Stat. 1957, Chapt. 16½, Par. 34.3.)

The purpose of the September 30th deadline appears to have been to induce plaintiff to abandon this appeal. Leaving aside the question of the effect of this proviso, a reading of these four sections shows that the legislature was

trying to freeze the present scale of plaintiff's operations and to remedy the principal complaint of the currency exchange operators, *i. e.*, competition by plaintiff.

The extensive procedural requirements of the entire act would make it next to impossible to extend, or even retain plaintiff's present scale of operations. Employers offer this service to their employees as a convenience. The question arises, how many employers would be willing to participate in hearings before the Auditor on the nebulous questions of public convenience, and possible court action thereon, in order to secure a service for their employees which the new customers may never have tested. This Court has long recognized that a multiplication of licensing and other procedural requirements may negate a substantive constitutional right. *Hood* v. *Dumond*, 336 U. S. 525; cf. *Staub* v. *Baxley*, No. 48, Oct. Term 1957, U. S. Supreme Court.

Section 4 requires an affidavit by a "duly authorized representative" of each employer. The sole purpose of this provision is harassment. Quaere: Does this not mean authorization by the board of directors, in the case of a corporation? Plaintiff's business depends on continuous uninterrupted service. To make the continuance of plaintiff's business dependent on the future formal action of some 1500 boards of directors is to impose a condition which is not only unreasonably burdensome but has not the remotest relation, to any public hazard.

Now when the Auditor holds these 1,500 license hearings (Sec. 4.3), the question arises as to what test he must use in granting or denying the license. Presumably the test would be the same as that used under section 4.1 of the Act. That is, if a community exchange could show that the plant seeking the service was located within his territory, apparently the application would have to be denied. The history of this legislation, the decision of the Supreme Court of Illinois in *Gadlin* v. *Auditor*, 414 Ill. 89 (com-

mented upon *supra* at page 3 and the statement in the preamble, that "community currency exchanges" (but not "ambulatory currency exchanges," *i. e.*, Thillens) are to be "promoted," "fostered," and "assured financial stability" would seem to require this result. (See also the testimony and exhibits of Max Pyka, the assistant to the then Auditor Hodge, Abst. 489-600, 611-617, showing the territorial allocation system employed by the Auditor in processing licenses.)

In an attempt to cause plaintiff to raise its rates and so to be priced out of competition, defendants have sought to load plaintiff with a plethora of license fees, investigation fees and examination fees. As Justice Davis stated: "It is inescapable that these requirements are not designed to protect the public, but to increase plaintiff's cost and facility of doing business." (Jurisdictional Statement, Page 37a). The total fee charges of all community exchanges in 1949 was about $34,000 (Abst. 483). The plaintiff, under this new act, would not only be required to pay nearly that much in annual regulatory fees (at least $15,000 today) but would also bear the exorbitant additional cost of some 1,500 hearings on license applications, plus bonding premiums and the cost of hiring extensive additional personnel to comply with the armed guard and other provisions of the Act.

V. THE LEGISLATIVE "FINDINGS" UPON WHICH THIS AMENDMENT IS BASED ARE WITHOUT BASIS IN FACT AND HAVE NOT THE REMOTEST RELATION TO ANY PROPER PUBLIC PURPOSE.

(a) Plaintiff's Competition Is Neither Unfair Nor Ruinous.

The trial court found:

> "9. The plaintiff by its operation has not appropriated the most profitable function of the community currency exchange business considered as a whole, but

on the contrary, plaintiff's business has not materially or in any degree affected the profitable operations of the business as a whole or in part.

"10. There has been no unfair or ruinous competition to the licensed community exchange business, and during the years of the plaintiff's operations the community currency exchange business has from year to year increased in size. Neither the industry nor any individual exchange has been rendered unprofitable as a result of the plaintiff's operations." (Jurisdictional statement p. 3A.)

These findings are fully supported by the record. A full briefing and argument would show that there is no substance whatsoever to the claim of hardship by the intervening operators or that plaintiff has any competitive advantage over them.

The economic premise of the legislature in enacting this statute was that intervenors suffer a tremendous competitive disadvantage by reason of their being regulated, while plaintiff is not, and that fairness demands that equal regulatory burdens be imposed on plaintiff without regard to the nonfiduciary nature of his business.

The simple answer to this contention was stated by the dissenting justices:

"The validity of the Community Currency Exchange Act as applied to community exchanges was based on various fiduciary activities in which the plaintiff does not engage, such as handling other people's money, issuing drafts, selling money orders, acting as bailie in payments of bills, taking other people's money and purchasing paper. (*McDougall* v. *Lueder*, 389 Ill. 141.) While extensive regulations of such activities may be warranted, the same regulation of the plaintiff, which merely cashes checks with its own funds, without any fiduciary relationship with the public, is clearly unreasonable. Cf. *People ex rel. Barrett* v. *Thillens*, 400 Ill. 224." (Jurisdictional Statement p. 39a.)

The Attorney General's Motion (pp. 6-7) tries to justify the attempted restraint of competition in this statute on the ground that since the currency exchange owners hold the public's money as fiduciaries in their money order business, they are performing a public service for which plaintiff ought to subsidize them in the check cashing field.

The Attorney General admits, however, that check cashing does not involve holding the public's money. In fact, the currency exchanges obtain a tremendous competitive advantage over plaintiff by reason of the fact that the half billion money orders which they issue each year give them a tremendous "float" of money, which they use to finance their check cashing operations (Abst, 466-468). But plaintiff, who issues no money orders and competes only in the non-fiduciary check cashing field, must make a loan each week of over 3 million dollars (1954 Abst. 163) to finance his operations.

Now intervenor defendants seek to demonstrate that the trial court's findings were without basis in fact, referring to the disproved "findings" of the legislature and complaining of the expenses which each community exchange must bear. That said expenses are present, plaintiff concedes, but plaintiff is in no way responsible therefor and secures no competitive advantage as a result therefrom. If intervenor defendants find such charges burdensome, their complaints should be addressed in a proper manner to the legislature. It does not lie in plaintiff's power to correct the situation, nor does it lessen defendants' expenses by imposing upon plaintiff an illegal and unconstitutional burden.

None of the briefs filed in any of the courts herein have ever suggested a reason why the nonfiduciary plaintiff should bear a part of the expenses of the defendant's fiduciary operations. The statute avoids the problem by inventing the terms "ambulatory currency exchange" and

"community currency exchange." These words have no generic meaning. In no other state is there a statute regulating "ambulatory currency exchanges" or even recognizing that there is such a thing.

Much has been said by defendants about the respective rights of the plaintiff and the currency exchange operators. Nowhere has there been any discussion of the rights of the public. Each week over 100,000 working people (1958) freely elect to use plaintiff's convenient, inexpensive service at their plants. The statute seeks to restrict their right to make this choice. Although the legislature has wholly ignored this right, this Court ought not to follow suit.

(b) Plaintiff's Business Is Neither Dangerous Nor Hazardous.

The remaining ground urged by intervenors to support this legislation is the legislative finding that the plaintiff's activities constitute a hazard to public safety. This argument was seized upon by the Court below to avoid discussion of the infirmities of the Act. (Jurisdictional Statement, page 32a).

There is much quibbling in Intervenors' Motion (pp. 8-15) about the evidence concerning public safety; the trial court however, made the following findings which are fully supported by the record:

> "4. In 17 years of operation no customer of plaintiff or its predecessor has been injured or damaged as a result of a holdup, albeit there have been holdups, in one or two of which an employee of plaintiff was injured. During the same period of time there have been intermittent holdups of the community currency exchanges."
>
> "17. No person has ever suffered any loss as a result of any holdup of the plaintiff's employees."

"19. There is nothing in the provision for an armed guard to benefit the public. On the contrary, the presence of such a guard may insure the exchange of gunfire and the possibility of injury therefrom." (Jurisdictional Statement, pp. 2a, 3a, 4a).

The dissenting justices commented on this evidence as follows:

"The court grounded its opinion solely on the legislative determination that the operations of the plaintiff are dangerous to public safety. The record, in my opinion, reveals something quite different; it conclusively discloses that in seventeen years of operation, the general public has suffered neither physical injury, nor economic harm. But even assuming that the activity of plaintiff in using its own money to cash payroll checks is hazardous *per se*, a conclusion I believe unreasonable, the supervision of the Auditor of Public Accounts, the plethora of fees and charges, and the burdensome requirements of supervision, bonds, records and reports have no conceivable relation to this hazard. Nor does the requirement of an armed guard, without heed to whether plaintiff is cashing checks for $100 or $100,000, have such relation." (Jurisdictional Statement Page 38a).

Even if the evidence afforded some basis for the legislative finding, of hazard to the public, it affords no basis for the various economic provisions, whose sole design is to restrain competition in the check cashing field, and to injure plaintiff's business.

What conceivable relationship can there be between the legislature's proper interest in public safety and the monopolistic licensing provisions, the multitude of confiscatory fees, and the provisions for supervision by the state's chief fiscal officer?

Moreover, even the provisions which appear to have some relationship to public safety are unconstitutional by reason of the discriminatory exemptions and applications and cannot stand in any event.

VI. THE CURRENCY EXCHANGE ACT OF 1943 AS AMENDED IN 1951 IS A DENIAL OF EQUAL PROTECTION OF THE LAWS.

By reason of the exemptions contained in Section 1 this case is on all fours with *Morey* v. *Doud*, 354 U. S. 457.

Plaintiff does not deny that there may be some difference in the method of operation of plaintiff and the other operators of armored express companies, such as Brinks, but asserts that they are not of such a character as to justify any discrimination. The testimony of Eugene Murphy, a Vice President of Brinks, (Abst. 130-145) showed that Brinks engaged primarily in the two types of transactions covered by the exemption, namely, transporting and distributing cash payrolls, and cashing paychecks pursuant to a written contract with the employer, with his money. On occasion, Brinks has used its own money, as Thillens does. A full review of the testimony shows only a paper difference between the transactions involved and no difference in the physical operations or in the risk of physical harm. A full briefing and argument would show that the attempted distinction is even more tenuous than that rejected by this Court in *Morey* v. *Doud*, 354 U. S. 457.

As pointed out by Mr. Chief Justice Hughes in *Smith* v. *Cahoon*, 283 U. S. 553, 567: If "a classification is not based on anything having relation to the purpose for which it is made," the legislation containing said classification is void and unenforceable.

Defendant's final attempt to distinguish *Morey* v. *Doud*, 354 U. S. 457 is to say that it applies only when the exemption is by name. (Attorney General's Brief, p. 8). The simple answer to this contention is that the cases relied upon by this Court in *Morey* v. *Doud*, 354 U. S. 457 did not all involve exemptions by name. See e.g. *McFarland* v. *American Sugar Refining Co.*, 241 U. S. 79 (cited by this

Court in the *Morey* case at p. 467). Nor is it true, as defendants seem to suggest, that a closed class must consist of but one person or company. See *Morey* v. *Doud*, 354 U. S. 457, 467 n. 12.

The *Morey* decision was based on two earlier decisions, *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 79; and *McFarland* v. *American Sugar Refining Co.*, 241 U. S. 79, which presented the converse situation, in which the closed class alone was subject to the provisions of the Act. If the exemption in Section 1 alone is considered, the 1951 Amendment is like the *Morey* case, in that Section 1 creates a closed class of persons *exempt* from the Act. If the whole Act is considered, however, the case is really like *Cotting* and *McFarland*, in that by the blanket exemptions in Section 1 of the other check cashers and by the specific discriminations in favor of the "community" exchanges in the other sections of the Act, the legislature has really created a closed class of persons who are *subject* to the Act. And the primary, if not the sole, member of that class is plaintiff.

The legislation here in question denies to plaintiff the equal protection of the laws guaranteed by the Federal Constitution.

VII. THE SUPREME COURT OF ILLINOIS TRIED TO REVERSE THE HOLDING OF THIS COURT IN MOREY v. DOUD ON THE QUESTION OF THE INVALIDITY OF THE ACT.

This Court, in *Morey* v. *Doud*, 354 U. S. 457, after finding that the exemption of the American Express Company was unconsfitutional, turned to the question of whether the exemption was severable. On the authority of *McDougal* v. *Lueder*, 389 Ill. 141, this court held that the exemption was not severable. Accordingly, this Court held the entire act unconstitutional in its entirety. (354 U. S. 457, 649-70.)

The plaintiff moved to dismiss the appeal in the Supreme Court of Illinois on the ground that the subject matter of the suit had been disposed of by this Court since the entire act had been declared to be a nullity.

While the motion was pending the legislature purported to amend the statute by eliminating the exemption. (H. B. 1031, Jurisdictional Statement, pp. 40a, 41a, and 42a).

Plaintiff then filed a brief raising the question of whether the legislature had power to amend a statute, which had been declared unconstitutional. The Court refused to pass on the question of the effect of the amendment. (Jurisdictional Statement, p. 36a). (Parenthetically, it may be noted that neither of the cases cited by the Attorney General (p. 9), *Abbate Bros* v. *City of Chicago*, 11 Ill. 2d 337 or *Albers* v. *Lamson*, 380 Ill. 35, reach the question of whether an act which has been *declared* unconstitutional may subsequently be revived by mere amendment.)

What the Supreme Court of Illinois did was to say that this Court erred in holding the exemption severable, because the Supreme Court of Illinois then believed its earlier case, *McDougal* v. *Lueder*, 389 Ill. 141 had been wrongly decided. We have no dispute with the proposition that severability is a question of state law, and that state law should be followed if the question has already been litigated in the state courts. However, we submit that once the question has been decided by this Court, it is not open to review by the lower state court. Redress in the event of an unfavorable decision by this Court, whether correct or not, must come from the legislature. When this Court declared the Currency Exchange Act to be a nullity, the legislation was dead. It could be reenacted by the legislature without the exemption, but this Court's decision holding it invalid was not subject to review by a lower court, the Supreme Court of Illinois.

VIII. THE LEGISLATION IN QUESTION FOCUSES ATTENTION ON ONE OF THE GROWING PROBLEMS OF OUR AGE: THE POWER OF A GROUP OF BUSINESSMEN AND A RESPONSIVE LEGISLATURE TO DESTROY OR SERIOUSLY INJURE THE BUSINESS OF ONE CITIZEN FOR THE PURPOSE OF AIDING HIS COMPETITORS.

With the development of powerful trade associations, legislation of this character may well be a more serious danger to free competition and the valuable property rights of citizens than the more traditional methods of unfair competition. The development of powerful private groups which between them exercise a multitude of power ordinarily thought of as governmental in character has been of such broad sweep in the last decade, as to cause one serious commentator to state that the development "casts serious doubt upon the practical validity of some of the most basic theoretical assumptions concerning governments' monopoly of ultimate authority."[1]

Whether or not the developments referred to justify the commentator's extreme fears concerning the threat to the ultimate sovereignty of government, they do suggest the increasing necessity for constant vigilance by the courts to assure to citizens adequate protection from arbitrary, capricious or discriminatory legislation. The powers of the legislature have always been broad, but they have never included the right to enact statutes which are arbitrary, capricious or discriminatory.

Plaintiff has devoted a lifetime to developing an extremely valuable business, which provides over 100,000

1. W. W. Wirtz, *Government by Private Groups*, 13 La. Law Rev. 440, 463. At page 462 the author details certain workings of the lobbyists in the 1951 session of the Illinois legislature. For an interesting account of how the "agreed bill" system, under which four trade organizations have exercised a veto over bills related to industrial relations, has operated in the Illinois legislature, see Steiner, *Legislation by Collective Bargaining* (1951).

working people in Illinois with a convenient, inexpensive means of cashing their weekly paychecks. By a closely-divided court below (4-2, with Mr. Justice Schaefer not participating) a statute has been sustained which has no other purpose than to destroy a business which has previously been described by the Supreme Court of Illinois, as: "Highly useful and desirable." *People* v. *Thillens*, 400 Ill. 224, 234.

For thirteen years plaintiff has had to fight a continuous barrage of legal and legislative maneuvers by intervenors, which have had the destruction of his business as their sole end. Unless relief is granted by this highest Court Thillens will be without effective remedy and intervenor-defendants will have succeeded in destroying a valuable property right, which has been created by a lifetime of work, and which is entitled to constitutional protection.

CONCLUSION.

1. The exemption contained in Section 1 of the Act results in a denial of equal protection of the type and character condemned in *Morey* v. *Doud*, 354 U. S. 457.

2. The imposition of a multitude of arbitrary, capricious and discriminatory licensing and regulatory provisions on plaintiff for the benefit of his competitors, coupled with the simultaneous exemption of other firms engaged in the same business as plaintiff, renders the statute discriminatory and unconstitutional under the principles announced by this Court in *Morey* v. *Doud*, 354 U. S. 457.

3. The Supreme Court of Illinois attempted to reverse the holding of this Court in *Morey* v. *Doud*, 354 U. S. 457, that the unconstitutional exemption of the American Express Company from the operation of this Act was not severable from the remainder of the Act, and that hence the entire Act was unconstitutional.

4. The Act in question deprives plaintiff of its valuable property without due process of law and is in violation of the equal protection clause of The Fourteenth Amendment of the Federal Constitution.

It is submitted that this appeal presents substantial federal questions (*Staub* v. *Baxley*, No. 48, October Term, Supreme Court of United States); that it is meritorious in that the opinion below is in conflict with decisions of this Court; that the motions should be denied and that the case should have plenary consideration.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957

No. 696

THILLENS, INC., a corporation,

Appellant,

v.

LLOYD MOREY, Auditor of Public Accounts of the State of Illinois; Latham Castle, Attorney General of the State of Illinois; John Gutknecht, State's Attorney of Cook County, Illinois,

Appellees, and

HAROLD A. ARNOLD, doing business as LAKEVIEW CURRENCY EXCHANGE; RALPH BARR and LOUIS WOLFBERG, copartners doing business as MARSHALL SQUARE CURRENCY EXCHANGE; JOHN F. BOGIE, doing business as RAVENSWOOD CURRENCY EXCHANGE, and SIDNEY SORKIN, doing business as CERTIFIED CURRENCY EXCHANGE,

Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION OF ELBERT S. SMITH, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS, AND LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, TO DISMISS OR AFFIRM.

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Appellees, Elbert S. Smith, Auditor of Public Accounts of the State of Illinois, and Latham Castle, Attorney General of the State of Illinois, move that this appeal be dismissed on the ground that it does not present a substantial Federal question, or in the alternative, that the judgment of the Supreme Court of Illinois be affirmed because the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

LATHAM CASTLE,
Attorney General of Illinois,
Attorney for Appellee State Officers.

REFERENCE TO AND ADOPTION OF OTHER APPELLEES' MOTION TO DISMISS OR AFFIRM.

We have been privileged to read the motion of appellees Arnold, Barr and Wolfberg, Bogie and Sorkin, to dismiss or affirm. The Auditor and the Attorney General of the State of Illinois adopt the considerations urged in that motion.

However, it is the view of the Attorney General that other important grounds for dismissal or affirmance exist, which grounds are not mentioned or are not fully developed in the motion of the other appellees. These grounds are presented in support of the motion of the appellee State officers.

SUGGESTIONS IN SUPPORT OF THIS MOTION TO DISMISS OR AFFIRM.

I.

The Federal questions tendered by this appeal are not substantial and do not need further argument.

Section .01 of The Community Currency Exchange Act of 1943, as amended in 1951 (Ill. Rev. Stat. 1957, Ch. 16½, Pars. 30-56.3, Vol. I, pp. 277-291), is as follows:

Sec. .01. The General Assembly has found and declares:

that the community currency exchange business, as hereinafter defined in Section 1, has become so widespread since the bank holiday in 1933, and so extensively and intimately integrated with the financial institutions of this State that it is affected with a public interest and should be licensed and regulated as a business affecting the convenience, general welfare, and economic interest of the people of this State;

that no community currency exchange should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act;

that the number of community currency exchanges should be limited in accordance with the needs of the communities they are to serve, and in accordance with the provisions of this Act;

that there has arisen also the ambulatory currency exchange business, as hereinafter defined in Section 1, which has engaged heretofore in unlicensed competition with the licensed community currency exchange business;

that it is in the public interest to promote and foster the community currency exchange business and to assure the financial stability thereof;

that the operations of the ambulatory currency exchange business have enabled it to appropriate the most profitable function of the community currency exchange business without incurring the expenses of, or subjecting itself to the regulations imposed upon the community currency exchange business, and to secure thereby an unfair advantage; that there has resulted therefrom an unfair and ruinous competition to the licensed community currency exchange business;

that the nature of the ambulatory currency exchange business is such as to render it hazardous and dangerous to the public safety and security;

that the public welfare demands that no ambulatory currency exchange business should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act.

(Ill. Rev. Stat. 1957, Ch. 16½, Par. 30, Vol. I, p. 277.) (Emphasis supplied.)

The Supreme Court of Illinois has thus succinctly and correctly delineated the reasons for the constitutionality of the measure now under attack in its opinion in the instant case (*Appellant's Jurisdictional Statement*, p. 31-a, 11 Ill. 2d p. 579, 144 N. E. 2d at p. 735).

> "As stated in the case of *Thiltens, Inc.* v. *Hodge*, all presumptions are in favor of the constitutionality of legislation once it becomes the law of the State, and all reasonable doubts must be resolved in its favor. The party attacking the validity of a statute has the burden of proving that it is clearly arbitrary and has no foundation in the police power for its existence. Where the reasonableness of the legislation is fairly debatable the courts will not interfere with the legislative judgment and will not substitute their judgment for that of the legislative department. Such principle does not foreclose the courts from exercising their judicial function, and it is true that the reasonableness and propriety of

regulation and its application must be decided by the court from the facts and circumstances in evidence. *Midland Electric Coal Corp.* v. *County of Knox*, 1 Ill. 2d 200, 115 N. E. 2d 275. However, the trial court has no power to judge in accordance with its judgment on conflicting evidence but its duty is only to decide whether the question is fairly debatable. If fairly debatable it should not investigate further. *Gadlin* v. *Auditor of Public Accounts*, 414 Ill. 89, 110 N. E. 2d 234. It makes no difference that substantial evidence on both sides may be in conflict or that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not for the courts to arbitrate in such contradictions of evidence. *Stewart* v. *Brady*, 300 Ill. 425, 133 N. E. 310; *Rams-Head Co.* v. *City of Des Plaines*, 9 Ill. 2d 326, 137 N. E. 2d 259; *City of West Frankfort* v. *Fullop*, 6 Ill. 2d 609, 129 N. E. 2d 682. From the findings of fact specifically made by the trial court that the plaintiff cashed checks on the public streets while engaged in promotional services, that there have been holdups in which individuals have been injured, that there is no armed guard other than the armed cashier himself when cashing checks outside of an armored truck, that there is competition between the plaintiff and currency exchanges and that plaintiff charges uniformly less than the rates charged by currency exchange operators, that plaintiff's business concerns itself only with the most profitable function of community currency exchange business, and from other facts in evidence whereby it appears that the plaintiff itself recognizes the element of public danger from its operations by carrying very large insurance policies indemnifying the public against loss from holdup, and by the extensive protection furnished its own employees and its property, the use of armored cars, extensive firearm training, and advance notification of police as to its routes and cashing operations, there seems to be ample evidence from which the legislature could reasonably conclude that the plaintiff's operation directly affected the public safety and the use of public highways. From the facts before the court it seems amply clear that the legislature was not unreasonable, arbitrary or capricious in determining that the nature of the plaintiff's business was such as to render it hazard-

ous and dangerous to the public safety and security, warranting police regulations."

The Act now under attack declares and enacts the considered and deliberate policy of the State of Illinois with respect to ambulatory or mobile currency exchanges in their relation to exchanges operated at a fixed location. That policy may be thus fairly summarized:

Currency exchanges in general in Illinois furnish services for the cashing of checks at a moderate fee. This, so the General Assembly recognizes, is the most profitable services of such exchanges.

But such exchanges also furnish other services that in language of the General Assembly are "so extensively and intimately integrated with the financial institutions of this State" that the business "is affected with a public interest." These services include the sale of money orders and the remittance of funds in payment of public utility and other bills. Currency exchanges thus in effect function as depositaries of the public's money; for while the money orders are outstanding and the items of remittance of public utility bills are in transit, the proprietor of the exchange, individual or corporate, has on hand huge sums of money held for the redemption of the money orders and the payment of the utility bills.

It is easy to see that either defalcation by the proprietor of the exchange or an employee, robbery or burglary may have the consequence of a public disaster involving hundreds of persons and thousands of dollars.

To be sure, appellant does not itself vend money orders or act as a remittance agency for the payment of public utility bills. But it competes with the cashing of checks with those exchanges that not only cash checks but perform these other important services involving the fiduciary redemption and disbursement of vast sums of money.

In the language of the Legislature quoted from Section .01 of the Act above, the ambulatory currency exchange business, engaged in "heretofore unlicensed competition with the licensed community currency exchange business," has been enabled "to appropriate the most profitable function of the community currency exchange business without incurring the expenses of, or subjecting itself to the regulations imposed upon the community currency exchange business, and to secure thereby an unfair advantage." Declaring that "it is in the public interest to promote and foster the community currency exchange business and to assure the financial stability thereof," the General Assembly has enacted the instant legislation.

The Attorney General of Illinois earnestly suggests that once the reasons for and the *rationale* of the present measure are appreciated, it is clear that appellant's challenge of the present Act "does not present a substantial Federal question" and "it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument."

It is *not true* that the enforcement of the instant Act will expel appellant from the business of cashing checks. Appellant's own impressive demonstration of the highly profitable business that it has built up, beginning with only one truck and now serving a very large segment of Chicago, is the best possible proof that the Act will not be confiscatory.

Nor is there any substance to appellant's charge that the community currency exchanges enjoy a "monopoly" of the business of cashing checks. On the contrary, appellant's business verges far more nearly on monopoly than does that of any community currency exchange.

Appellant asserts the existence of a claimed "exemption" of concerns which, like Brinks' Express, transport an em-

ployer's money for the meeting of payrolls. The Supreme Court of Illinois thus dealt with this contention of appellant.

> "The exemptions complained of refer to businesses not primarily engaged in currency exchange or check cashing, but refer to businesses whose primary business is something different, viz., the transportation of another's valuables for hire, or retail sales. In each type of exempted business it is recognized that incidentally checks may be cashed. Under the applicable rules, however, we must conclude that the legislature exempted from the application of the act certain businesses with different characteristics predicated upon a reasonable belief that the evils at which the statute was directed did not exist in sufficient degree in the exempted classes to warrant regulation. From the facts introduced in evidence, we cannot say the legislature acted arbitrarily or unreasonably in providing the exemptions attacked."

None of these other business concerns is exempted by name. The Act is merely inapplicable to them.

II.

"The Question of the Effect of the Decision in the Morey v. Doud Case Upon the Act in Question" Is a Question of State Law.

Appellant suggests that in *Morey* v. *Doud*, 354 U. S. 475, the Court held invalid the entire Illinois Currency Exchange Act and that therefore "there was nothing left for the Legislature of Illinois to amend (See H. B. 1031, Appendix B); or for the Supreme Court of Illinois to adjudicate."

Morey v. *Doud* held invalid the exemption of the American Express Company from the Illinois Community Currency Exchange Act and therefore held the Act unconstitutional as to the plaintiffs in that case.

Subsequently to the impact of this Court's decision in the *Morey* case the General Assembly *deleted* the exemption of the American Express Company from the Act. This appears from Illinois House Bill 1031, reproduced in full in Appellant's Jurisdictional Statement, at page 41-a, and from the text in the compiled edition of the Illinois statutes (Ill. Rev. Stat. 1957, Ch. 16½, Par. 31, Vol. I, p. 278).

In its opinion in the instant case the Supreme Court of Illinois has recognized the Act as subsisting after the amendment deleting the exemption of the American Express Company and has held that exemption severable. The Court says in its opinion (*Appellant's Jurisdictional Statement*, p-36-a, 11 Ill. 2d at p. 597):

> "We must accept such amendatory act as a positive and irrebuttable indication that the Illinois legislature would have passed the Currency Exchange Act even though the named companies were subject to its application, notwithstanding this court's prior *dicta* in the *McDougall* case. Such being the fact, such exemption clause should be considered severable (*Myers* v. *Krajefska*, 8 Ill. 2d 322) with no effect on the validity of the remainder of the Currency Exchange Act even though such clause is invalid under the United States Supreme Court decision in the *Morey* case."

The Illinois rule is that the amendment of legislation removing discriminatory provisions cures any vice that might have inhered in the original act. *Abbate Bros., Inc.* v. *City of Chicago*, 11 Ill. 2d 337.

The Illinois rule is further that legislation unconstitutional at the time of its enactment may become constitutional without reenactment by a change in the circumstances that are the subject of the act. *Albers* v. *Lamson*, 380 Ill. 35.

Since the Supreme Court of Illinois has recognized the Currency Exchange Act as now subsisting as amended de-

spite *Morey* v. *Doud*, 354 U. S. 457, that is an end of the matter.

Appellant's suggestion that there is no Illinois legislation subject to amendment tenders only a question of State law that has been resolved by the Supreme Court of Illinois.

Conclusion.

For the reasons set forth above, it is respectfully submitted that this appeal should be dismissed or that the judgment of the Supreme Court of Illinois should be affirmed without further argument.

Respectfully submitted,

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Office - Supreme Court, U.S.
FILED
JAN 27 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

NO. 696

THILLENS, INC., a corporation, *Appellant*,

vs.

LLOYD MOREY, Auditor of Public Accounts of the State of Illinois; **LATHAM CASTLE**, Attorney General of the State of Illinois; **JOHN GUTKNECHT**, State's Attorney of Cook County, Illinois, *Appellees*,

and

HAROLD A. ARNOLD, doing business as **LAKEVIEW CURRENCY EXCHANGE**; **RALPH BARR** and **LOUIS WOLFBERG**, copartners doing business as **MARSHALL SQUARE CURRENCY EXCHANGE**; **JOHN F. BOGIE**, doing business as **RAVENSWOOD CURRENCY EXCHANGE**; and **SIDNEY SORKIN**, doing business as **CERTIFIED CURRENCY EXCHANGE**, *Appellees*.

APPEAL FROM SUPREME COURT OF ILLINOIS.

MOTION OF APPELLEES, HAROLD A. ARNOLD, etc.; RALPH BARR and LOUIS WOLFBERG, etc.; JOHN F. BOGIE, etc.; and SIDNEY SORKIN, etc., TO DISMISS OR AFFIRM.

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HAROLD A. ARNOLD, doing business as LAKEVIEW CURRENCY EXCHANGE; RALPH BARR and LOUIS WOLFBERG, copartners doing business as MARSHALL SQUARE CURRENCY EXCHANGE; JOHN F. BOGIE, doing business as RAVENSWOOD CURRENCY EXCHANGE; and SIDNEY SORKIN, doing business as CERTIFIED CURRENCY EXCHANGE, *Appellees.*

APPEAL FROM SUPREME COURT OF ILLINOIS.

MOTION OF APPELLEES, HAROLD A. ARNOLD, etc.; RALPH BARR and LOUIS WOLFBERG, etc.; JOHN F. BOGIE, etc.; and SIDNEY SORKIN, etc., TO DISMISS OR AFFIRM.

Appellees, Harold A. Arnold, etc.; Ralph Barr and Louis Wolfberg, etc.; John F. Bogie, etc.; and Sidney Sorkin, etc., pursuant to Rule 16 of the Revised Rules of this Court, move that the appeal be dismissed on the ground that it does not present a substantial federal question, or in the alternative, that the judgment of the Supreme Court of Illinois be affirmed, on the ground that the questions on which the decision of the cause depends, are so unsubstantial as not to need further argument.

STATEMENT.

Contrary to Rule 15, appellant failed to set forth or attach a copy of the Amendatory Act of 1951, which is challenged here, or to state the questions presented by its appeal "in the terms and circumstances of the case."

What appellant has attached as a "copy of Statute here involved," (pp. 42a-67a of its jurisdictional statement) is a copy of the entire Currency Exchange Statute as it was in 1951. We have attached hereto as an appendix the Amendatory Act of 1951, which is the only Act in issue here.

By reason of the broad and unlimited statement of the questions presented under (1) (Jurisdictional Statement p. 4), it asks the Court to pass upon "the manifold provisions of a broad statute in advance of efforts to apply the separate provisions." The Court has steadfastly refused such an invitation. *Watson* v. *Buck*, 313 U. S. 387, 402; *Electric Bond Co.* v. *Comm.*, 303 U. S. 419, 443.

It should also be noted that in House Bill No. 1031 (appellant's appendix, pp. 40a, 41a) enacted 1957, the validity of which is not in question here, the words "American Express Company money orders" were eliminated. (Vol. I, Ill. Rev. Stat. 1957, Ch. 16½, Par. 31, P. 278).

The history of the Amendatory Act of 1951, and its background, are relevant here.

As early as 1931, there was at least one community currency exchange in Chicago, and in 1932 there was a large number of them on Chicago's South Side. One of the

community exchanges on Chicago's North Side was operated in 1932 by Melvin G. Thillens. In 1934, he commenced also his business of cashing payroll checks on the premises of industrial plants and commercial establishments, and on the public streets in front of or near such plants and establishments, with the assistance of an armored truck. Both businesses occupied the same office, and still do, although in 1949, the armored service was incorporated as Thillens, Inc., appellant herein. His community exchange was licensed under the 1943 Currency Exchange Statute; the armored service never applied for such a license.

The 1943 Currency Exchange Statute contemplated a comprehensive licensing and regulatory plan covering the whole field of check cashing and money order operations. Sec. 1 defined a community currency exchange as any person etc., with certain exceptions, engaged in the business of cashing checks or selling money orders, or both, or either. *McDougall* v. *Lueder*, 389 Ill. 141, 144. An armored car check cashing service seemingly came within the express language of the definition. The State Supreme Court seemingly so held, when a consolidated attack upon the constitutionality of the Act made by an armored car service as well as by a community exchange, was overruled. *McDougall* v. *Lueder*, 389 Ill. 141, 145.

Consequently, the State's Attorney General, under the belief that Thillens' armored car service should not operate, inasmuch as a competitor was so prohibited by that decision, filed an injunction proceeding to restrain Thillens from operating his armored car service. The complaint did not allege that the business was dangerous; and the lower court entered judgment *on the pleadings* in favor of the State.

The trial court permitted Thillens to introduce evidence that his armored car business was not dangerous, but use-

ful and desirable, on the question of whether his appeal should operate as a supersedeas. The State saw no necessity to contradict the evidence.

The State Supreme Court held, on the basis of Thillens' uncontradicted allegations and proofs, that nothing had been alleged or shown which rendered his armored car business dangerous, and subject to the requirements of the Act. It emphasized that he operated only under contract with the employers. The Court adhered to its decision in the *McDougall* case, except that "in the present case the issue is whether the legislature intended to, and whether it had the power to, *prohibit entirely* mobile service offered by appellant as a matter of private contract between himself and the employer of workmen." *People* v. *Thillens*, 400 Ill. 224, 236. (Italics ours.)

We interpolate here that in the case at bar, appellant was unable to prove any contracts between it and the employers, or even the workmen, for the service. (Abst. 653, 658-663; Rec. 2180, 2198-2232). It advertised it required no contract, and it never costs the employer anything. (Int. Defs'. Exs. 17, 12, 14; Abst. 259, 255, 256, 257; Rec. 893, 879, 880, 883-887). A great deal of appellant's advertising matter was distributed to the public by mail; handbills; and street car media. Workmen were paid cash to bring in new business. One of its circulars importuned the public that it "saves employees money by making it unnecessary to cash checks where high rates are charged," probably having reference to the community exchanges. (Int. Defs.' Exs. 10, 11, 12, 13, 14, 15, 16, 17; Abst. 228, 229, 255-259; Rec. 700-705, 872-893.) As an added attraction, appellant cashed any other checks that the workmen might present beside payroll checks. (Abst. 211, 234; Rec. 621, 723).

Thus, when *People* v. *Thillens* was decided by the State Supreme Court, it became clear that the 1943 Act was but a mirage for the distressed community exchanges which alone were subjected to the high costs of regulation, and that it placed in the hands of the armored car services a sword of tremendous advantage with which to cut down their competition.

Freed from regulation, appellant was enabled to so seriously underprice the community exchanges, which are prohibited from engaging in business except at a fixed and permanent place of business (Sec. 10), that while appellant's business grew from nothing in 1934 to a volume of 3,800,000 checks ($235,000,000) in 1951, to 4,800,000 checks ($330,000,000) in 1954, the check cashing operations of the community exchanges slumped badly, although at the same time, the volume of checks in circulation in the Chicago area rose sharply, and the money order business of the community exchanges forged ahead. (Abst. 110, 455-457; Rec. 186, 187, 1729-1737). In 1953, appellant cashed almost one-third as many checks as those cashed by 488 community exchanges altogether. (Abst. 110, 457, 461, 603; Rec. 187, 1737, 1757, 1941).

As of July 1, 1951, there were 576 licensed community exchanges in the metropolitan Chicago area, and only 15 downstate. Appellant operates only in that Chicago area, and in substantially the same localities as those serviced by the community exchanges.

Four exchange operators testified that their check cashing activities were almost paralyzed when appellant moved in. One of them reduced his rates to meet appellant's. When he tried to raise his rates back again, he lost out to appellant. (Abst. 607, 610, 430-432, 622, 623, 379-381, 331-336, 347-349; Rec. 1957-1960, 1984, 1582-1589, 2041-2046, 1333-1334, 1046-1069, 1165-1175).

Payroll check cashing is the cream of the business, because there is no risk of forgery, and the operation requires a minimum of time and effort.

It would seem almost simple justice that businesses directly competing with each other and requiring in the reasonable judgment of the legislature regulatory measures, ought both to be burdened by regulation, instead of imposing the whole brunt of regulation on one segment, and giving the other the seal of approval; and that principle three legislatures and three State Auditors of different political faiths strove to effectuate in legislation.

So strong was the sentiment in the legislature anent Governor Stevenson's 1949 veto, that in 1951, Governor Stevenson in his message said:

> "Inasmuch as the legislature has for the second consecutive time, and by an overwhelming vote, concluded that the proposed regulation is in the public interest, I have no disposition to interfere further." Jurisdictional Statement, p. 71a.

It is not novel doctrine that the State may adjust competitive or economic inequalities, if it is in the public interest so to do, particularly where the inequalities have their roots in the statutory discrimination. *Slaughter House* Cases, 83 U. S. (16 Wall.) 36; *Atl. & Pac. Tea Co.* v. *Grosjean*, 301 U. S. 412, 425-427; *Nebbia* v. *New York*, 291 U. S. 502, 538; *Fed. Communications Com.* v. *R.C.A. Comm. Inc.*, 346 U. S. 86, 91, 92; dissenting opinion of Mr. Justice Frankfurter, *Hood* v. *Du Mond*, 336 U. S. 525, 566; *Trade Comm.* v. *Morton Salt Co.*, 334 U. S. 37, 49.

> "The state legislatures * * * are entitled to their own standard of the public welfare; they may within extremely broad limits control practices in the business-labor field so long as specific constitutional prohibitions are not violated * * *." *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421, 423.

ARGUMENT.

I.

The principle contention of appellant is that its business is not dangerous, although the legislature and a majority of the Illinois Supreme Court found otherwise. The detailed findings of that Court are found in 11 Ill. (2) 579, at 591, 592, and will not be repeated here. Jurisdictional Statement, pp. 31a, 31b.

The evil in that regard aimed at by the Amendatory Act was the check cashing operation inside a plant or establishment, where not done from within an armored truck, and the conduct of appellant's check cashing operations on the public streets. It was not aimed at the transportation of currency, because that operation in armored vehicles is relatively more safe from criminal attack, although on one occasion the Touhy gang blasted through one of appellant's armored vehicles with high powered rifles, and took a large sum of money. (Abst. 231, 247; Rec. 714, 829).

Checks are cashed at a central station inside the plant or establishment at approximately two-thirds of appellant's stops. At only 20 plants, bullet proof cages have been installed for check cashing, some by the employers themselves. The inside check cashing stations are located in the plant lunchrooms, corridors, or other large rooms where large numbers of workers gather and form in lines. Speed is of the essence, because then the operations are more profitable. These stations are unprotected by any physical equipment from criminal attack against appellant's armed cashier, who while engaged in cashing checks on a time schedule, cannot maintain proper vigilance and guard.

Appellant's armored vehicles carry as much as $300,000 on a single trip. Checks are cashed at locations with as many as 2,000 workers.

At holdups that occurred to appellant, large numbers of workers were terrorized by armed bandits brandishing sawed-off shotguns and tommy guns, and its personnel were pistol whipped and shot. One of the workers had her money robbed from her. Another fainted. Had a false move been made by any of the workers, a wholesale massacre could easily have occurred. (Abst. 231, 232, 233, 247, 248, 337-339, 309-314, 318-322, 341, 342, 345-347; Rec. 714, 715, 716, 718, 719, 978-996, 998-1012, 1081-1106, 1116-1124). At holdups that occurred to Brinks, men were killed. (Abst. 137; Rec. 288, 289).

Sec. 19.1 of the Amendatory Act required an ambulatory Exchange to provide an armed guard, in addition to the cashier, when engaged in check cashing on a licensed location other than from within an armored vehicle.

The State Supreme Court has twice taken judicial notice of the crime conditions peculiar to the Chicago area.

> "This investigation would doubtless reveal congestion in travel, both pedestrian and vehicular, causing an uncommon number of automobile accidents; blight and slum areas; areas of unassimilated foreign elements where crimes are bred and protection is offered fleeing criminals; skid rows where poverty, crime and general disrespect for the law abounds; narcotic rings, hoodlums, gangsters and racketeers that kill with sawed-off shotguns, *all of which pose problems on Chicago that are not found in other parts of Illinois.*" *Gaca* v. *City of Chicago*, 411 Ill. 146, 155; *DuBois* v. *Gibbons*, 2 Ill. (2) 392, 402, 403. (Italics ours).

Appellant, by its own sworn statements and testimony, has foreclosed itself from now contradicting the dangerous

nature of its check cashing operations inside a plant or establishment.

Appellant's sworn reply denied that it failed to provide armed guards where necessary to the protection of property or persons dealing with it. (Abst. 53, 54; Rec. 83). When required by written interrogatory to state when and under what circumstances it was necessary to provide an armed guard in addition to its cashier, it answered under oath:

> "Plaintiff provides an armed guard at every location served by plaintiff where checks are cashed inside a manufacturing plant where the amount of currency carried by the cashier exceeds $3,000." (Abst. 252; Rec. 836).

In answer to another interrogatory, it answered that out of 1240 stops, armed guards are provided, in addition to an armed cashier, at approximately 830 stops. (Abst. 252; Rec. 836).

Thillens personally testified that whenever they had sufficient manpower, an armed guard would accompany the cashier regardless of the amount involved. (Abst. 221; Rec. 676).

However, it was conceded that at several of the holdups where more than $3,000 was to be distributed, no armed guard was provided, and it was found by the trial and Supreme Courts that appellant generally did not provide an armed guard, other than the cashier, when cashing checks in plants. *Thillens, Inc.* v. *Morey,* 11 Ill. (2) 579, 591, 592; Jurisdictional Statement p. 31a.

Plaintiff's Exhibit 36 is appellant's instruction sheet issued to its personnel. It recites that it is the "*required* safety procedure to be followed by guards and cashiers

on stops, where money is exposed outside or *inside* the plant." Upon leaving the truck, the guard is required to have his gun drawn, and never leave the cashier out of sight. The cashier is required to push the money cart with one hand, and hold his gun in his other hand. *Inside* the plant, the cashier is required always to be fifteen feet in front of the guard, and the guard is required to "have his hand on gun butt, prepared to draw at any time." (Abst. 244; Rec. 813) (Italics ours).

Thus the existence of the danger, and the need for armed guards, did not end at the plant entrance as experience had shown and appellant *well knows;* and that is what the Amendatory Act sought to regulate. It made obligatory upon appellant what the latter, although it practiced it irregularly, considered as *necessary* safety procedure.

Brinks' vice-president, called by appellant, testified to the same evil and the same need of at least one armed guard at every point of check cashing activity. (Abst. 141, 142; Rec. 303, 306, 307).

The requisites of due process were therefore clearly established.

> "It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *Williamson* v. *Lee Optical of Okla.*, 348 U. S. 483, 488.
>
> "We cannot say that South Carolina is not entitled to call the funeral insurance business an evil. Nor can we say that the statute has no relation to the elimination of those evils. There our inquiry must stop." *Daniel* v. *Family Security L. Ins. Co.*, 336 U. S. 220, 224.
>
> "We do not sit to weigh evidence on the due process issue in order to determine whether the regulation is sound or appropriate; nor is it our function to pass judgment on its wisdom. * * * It is the judgment of the

local authorities that it does have such a relation, and nothing has been advanced which shows that to be palpably false." *Railway Express Agency* v. *New York*, 336 U. S. 106, 109.

Before we leave Sec. 19.1 of the Amendatory Act, it should be noted that it does not require the armed guard to be in the employ of, or compensated by, the ambulatory exchange. An armed police officer, or an armed plant guard, would be sufficient.

Sec. 19.2 required a $2,000 surety bond with each application for a location license, conditioned that the applicant shall comply with Sec. 19.1, and pay all "lawful" claims for money or property loss, or bodily injury, suffered in the course and by reason of a holdup at a location *that shall occur at the time or times when the applicant failed to comply with Sec.* 19.1. The applicant may file a blanket bond covering all licensed locations in a penal sum not to exceed $100,000, conditioned as aforesaid, but limiting the liability to $2,000 for each location.

The premium on such a bond for $100,000 is $1,000 annually. (Abst. 372; Rec. 1298)

Sec. 28 provided that unless an ambulatory exchange shall engage in the sale of money orders, Secs. 5, 6 and 7, which require of community exchanges a performance bond, insurance against various kinds of losses, and a minimum amount of liquid funds on hand, shall not be applicable to it.

Sec. 2 provided that no license shall be issued for the conduct of an ambulatory exchange on any public street or highway. Appellant, in answer to written interrogatories, admitted cashing checks on public streets and highways. (Abst. 250; Rec. 839). Thillens testified likewise. (Abst. 221; Rec. 675). Appellant's advertising matter and

letterheads showed the same. (Int. Defs.' Exs. 11, 12, 13, 14, 18, 18a; 21; Abst. 255-260; Rec. 876, 879, 882, 884, 898). It has been held many times that the State has supreme control of its streets and highways, and that when one uses them to carry on private enterprise for his own gain, his use may be withdrawn at any time. *Bode* v. *Barrett*, 412 Ill. 204, 219, aff'd. 344 U. S. 583; *People* v. *City of Chicago*, 415 Ill. 165, 167-169; *Hodge etc. Co.* v. *Cincinnati*, 284 U. S. 335, 337.

This practice of dispensing large sums of money on the streets wherever appellant saw fit to go, was not only a dangerous practice, as evidenced by the criminal attack made by the Touhy gang on appellant's armored vehicle, but a traffic hazard, and another facet of the unfair competition waged against the community exchanges.

Secs. 4 and 10 require of ambulatory as well as community exchanges a showing of applicant's character and fitness. Although appellant cannot complain thereof because it has not shown that it was aggrieved thereby, we would point out that an ambulatory exchange, when it gains access to plants and establishments, many of them engaged in government work, is in a trusted position; and its armed personnel are in a position to commit violence. No employer would knowingly afford access to men of shady or criminal records, or to ambulatory exchange operators who could not respond financially for the unlawful acts of its personnel. Appellant recognized this risk by screening and training its armed personnel, and subjecting them to lie detector tests (Abst. 149; Rec. 329, 330), and by obtaining insurance. (Abst. 253, 254; Rec. 840-870).

Appellant's assertion in this connection that the Amendatory Act fails to state the conditions upon which the Auditor may issue, deny or revoke a license, although ap-

pellant has not shown that it has been aggrieved thereby, is inconsistent with Secs. 4, 10 and 15. Secs. 22.01 and 22.02 provide for review of the Auditor's action by the Circuit and Supreme Courts. A similar contention was overruled in *McDougall* v. *Lueder*, 389 Ill. 141, 155.

Sec. 4 also requires a sworn statement of consent from employers whose workers are to be served by an ambulatory exchange. This is a reasonable administrative regulation which would resolve controversies between applicants without the expense of a hearing. Otherwise, an applicant could tie up any number of locations unbeknown to the employers there. The requirement is analogous to provisions for frontage consents for gas filling stations, billboards, public garages, and zoning variations.

Sec. 4 also requires a fee of $25 to cover the cost of investigating the applicant, which is not payable more than once. That is not a license fee. The only license fee paid by an ambulatory exchange is $10 annually for each location (*i.e.* plant or establishment) served by it. Such licenses are issued to applicants approved by the State Auditor as to character and fitness, who file the required employers' consents.

Sec. 16 of the 1943 Act relating to reports and examinations was amended to include ambulatory exchanges, so that the requirements were applicable to all exchanges. Inasmuch as appellant does not engage in the money order business, it would naturally be called upon for considerably less information and examination. Neither this section nor any other section, calls for a "plethora" of reports, or records, or fees, or charges. Under Sec. 16, the only fee charged is when the Auditor examines witnesses under oath; and in the case of ambulatory exchanges, it is not increased by reason of the number of its locations.

Appellant's evidence showed that as of 1951, it served 650 locations, and cashed about 4 million checks averaging $58 to $60 each, for a fee of 20¢ each check. The record shows that the annual cost of regulation based on those figures would run about $7,500, which is less than 1% of appellant's gross income, and exceedingly little indeed, when compared with the considerably higher regulatory costs imposed upon the community exchanges.

The foregoing are in essence the regulations imposed upon appellant. This is what appellant claims will accomplish "the very destruction of Thillens' business" and leave to the community exchanges a "monopoly of the entire payroll check cashing business." Jurisdictional Statement, pp. 15, 16.

In order to show the undesirability of this legislation, appellant has stepped outside the record to accuse the community exchanges of lobbying, and attempting to drive Thillens out of business, and of being "actively involved" in *Morey* v. *Doud*, 354 U. S. 457. A strikingly similar attack was made upon the "insurance lobby" in *Daniel* v. *Family Security L. Ins. Co.*, 336 U. S. 220, 224, where the District Court expressly found that the legislation there was "designed to, and will destroy" the plaintiff, and that it "had its genesis in the desire of the existing insurance companies to eliminate the plaintiff company as a competitor." This Court, in overruling that contention, unanimously said:

> "Looking through the form of this plea to its essential basis, we cannot fail to recognize it as an argument for invalidity, because this Court disagrees with the desirability of the legislation. We rehearse the obvious when we say that our function is thus misconceived. • • • The forum for the correction of ill-considered legislation is a responsive legislature."

II.

Appellant claims that the legislation is discriminatory because "the complaint alleged, the evidence established, and both the trial court and the Supreme Court found that appellant is the only operator of a payroll check cashing service in Cook County," etc. (Jurisdictional Statement, p. 15). This assertion is unsupported by the record.

The Supreme Court of Illinois did not so find in the case at bar.

The trial court found there were two others engaged in that business (Abst. 77; Rec. 123). Appellant's complaint alleged there were two others, besides Brinks, which it alleged was engaged in isolated transactions. (Abst. 2, Rec. 5). The undisputed evidence showed that Brinks was regularly engaged therein since 1939. (Abst. 139, 140; Rec. 292, 293, 296, 297). No evidence was introduced by appellant to show that the businesses of the other two were or were not of substantial size.

(Parenthetically, there are a number of incorrect statements in the Jurisdictional Statement. We would point out also that its Appendix D, which is wholly irrelevant to this case, does not correctly set forth the language of that statutory amendment. (Vol. 1, Ill. Rev. Stat. 1957, Ch. 16½, Par. 34.3, P. 280). Elaboration on all the inaccuracies would prolong this argument unduly.)

The contention that appellant was the only business materially affected by the Act, was likewise made and overruled in *Daniel* v. *Family Security L. Ins. Co.*, 336 U.S. 220, 225, footnote 5, where the Court said:

> "That respondent company is the only concern now affected by the statute does not, of course, mean a denial of equal protection. The statute is drawn in general terms; the company's success might will induce others to enter the business."

In the *Daniel* case, the plaintiff was put out of business by the statute. That is not the fact here.

Appellant claims that Sec. 1 is discriminatory, because of what it refers to as "the Brinks exception" (p. 9), although at p. 14, it concedes that said exemption can apply to Brinks "and the few others engaged in armored car transport." The record does not disclose how many others there are.

The State Supreme Court adequately disposed of this contention. *Thillens, Inc.* v. *Morey*, 11 Ill. (2) 579, 595. The carrier excepted by Sec. 1 is only the servant of the employer, and it is the employer who is actually cashing the checks with his own money. Sec. 1 excepts those engaged in the transportation of money etc. who "only as an *incident* thereto, cashes checks" etc., *"with the funds of and at a cost only to"* the *employer* pursuant to written contract.

The legislature had the right to believe that the employer in such a case would exercise greater care for the safety of his own property and of his employees than he would where the funds do not belong to him, but to an ambulatory exchange, and that the employer did not contribute to the evil to the same degree that an ambulatory exchange does, servicing regularly hundreds of concerns. Classification according to occupations has always been considered reasonable and proper; and it was not necessary to bring every employer in Illinois under the Act in order to regulate the ambulatory exchanges. *Semler* v. *Oregon State Bd.*, 294 U.S. 608, 610.

There is no closed class involved here, and there is nothing to prevent appellant from coming within the exception if it chooses to change the nature of its operations. "The fact that New York City sees fit to eliminate from traffic

this kind of distraction, but does not touch *what may be even greater ones in a different category* * * * is immaterial. It is no requirement of equal protection that all evils of the same genus be eradicated or none at all." *Railway Express Agency* v. *New York*, 336 U.S. 106, 110. (Italics ours).

It should not be understood from the foregoing that Brinks, as to its ambulatory exchange operations, is exempted from the Amendatory Act of 1951. As to those operations, which are substantial as above indicated, it is subject to the Act, and Brinks does not claim otherwise.

Nor is there merit in appellant's contention that it is discriminated against because the community exchanges are not required to provide guards. If, as appellant contends, the two businesses are "completely different" (Jurisdictional Statement, p. 17), then they are not comparably situated. The uncontradicted evidence showed that every community exchange is protected by specially constructed bullet proof armored cage equipment and bullet proof cage glass. (Abst. 370, 371; Rec. 1292-1295). They would be unable to secure the insurance required by Sec. 5 and 6 of the Act without such equipment (Abst. 397; Rec. 1420); and without such insurance, they could not be licensed under the Act. They are about as well fortified as an armored vehicle, which requires no license under the Amendatory Act. They are small places of business, often 10x25 feet in width, and 10x25 feet in depth. (Abst. 433; Rec. 1593); and few customers congregate there at one time. The holdups that occurred there happened when no customers were present. (Abst. 374; Rec. 1309, 1310). It is not correct, as appellant says with reference to community exchanges "that in some instances, there has been serious injury to members of the public," or that

appellees' witnesses so testified. Jurisdictional Statement, p. 20. That is unsupported by the record. (Abst. 374; Rec. 1309-1311)

Certainly the foregoing does not add up to invidious discrimination.

III.

Appellant's final contention is that *Morey* v. *Doud*, 354 U. S. 457, invalidated the whole Act, even as to appellant, who is not engaged in the money order business and not comparably situated with American Express Co., and not discriminated against, because of the exemption of American Express Co.

Appellant never alleged or made the contention that it was discriminated against by the American Express exemption until after it filed its petition for rehearing in the State Supreme Court, and therefore waived the point, if it was ever available to it.

This Court did not say in *Morey* v. *Doud*, that the whole Act was void as to everybody, including those not discriminated against. It is elementary that before one may be heard to strike down state legislation because of repugnancy to the 14th Amendment, he must bring himself within the class affected by the unconstitutional feature. *Arkadelphia Co.* v. *St. Louis Ry. Co.*, 249 U.S. 134, 149; *National Union* v. *Arnold*, 348 U.S. 37, 41. We repeat, appellant never was, and is not now, engaged in the money order business, and could not be aggrieved by the American Express exemption.

This Court in *Morey* v. *Doud* affirmed a decree of the District Court which enjoined enforcement of the Act against the plaintiffs there "so long as they engaged only in the business of issuing and selling money orders." This

proviso would be meaningless if the Court's intention was to void the whole Act.

In *Morey* v. *Doud*, 354 U.S. 457, 476, footnote 16, the Court said that the judgment of the Illinois Supreme Court on the question of severability was binding on this Court.

The Supreme Court of Illinois has now decided that the exemption of American Express money orders was severable. *Thillens, Inc.* v. *Morey*, 11 Ill. (2) 579, 596, 597; Jurisdictional Statement, pp. 35a, 36a.

IV.

There are other principles applicable here, which we shall advert to without argument.

1. Inasmuch as the State could take the whole check cashing business under its control, it may permit others to engage in it upon such conditions as it may prescribe. *Noble State Bank* v. *Haskell*, 219 U.S. 104, 113; *California Auto. Assoc.* v. *Maloney*, 341 U.S. 105, 110; *Osborn* v. *Ozlin*, 310 U.S. 53, 66; *Daniel* v. *Family Security L. Ins. Co.*, 336 U.S. 220, 224, footnote 4; dissenting opinion of Mr. Justice Frankfurter and Mr. Justice Harlan, *Morey* v. *Doud*, 354 U.S. 457, 472.

2. The philosophy of the *Allgeyer, Adams, Lochner, Coppage* and *Adkins* cases has been repudiated, and this Court leaves debatable issues as respects business affairs to legislative decision. State legislatures are no longer put in a strait jacket when they attempt to suppress business conditions, which they regard as offensive to the public welfare, so long as their laws do not run afoul of some *specific* federal constitutional prohibition, or of some valid federal law. *Lincoln Fed L. U.* v. *Northwestern I. & M. Co.*, 335 U.S. 525, 536; *Day-Brite Lighting, Inc.* v. *Missouri*,

342 U.S. 421, 425; *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 488; dissenting opinion of Mr. Justice Black, *Morey* v. *Doud*, 354 U.S. 457, 470.

3. Since as early as at least 1934, the words "unreasonable" and "arbitrary" do not have the same content as is ascribed to them by appellant. *Daniel* v. *Family Security L. Ins. Co.*, 336 U.S. 220, 225.

CONCLUSION.

The questions presented here are without substance, and the motion to dismiss or affirm should be granted.

Respectfully submitted,

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APPENDIX.

Amendatory Act of 1951.

(N.B.—Italicized words were added and underscored words in brackets were subtracted.)

An Act to amend Sections 1, 2, 3, 4, 8, 9, 10, 11, 14, 15, 16 and 18 and the title of "An Act in relation to the regulation of community currency exchanges, and the operators and employees thereof, and to make an appropriation therefor", approved June 30, 1943, as amended, and to add Sections .01, 19.1, 19.2, 28, 29 and 30 thereto.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 1, 2, 3, 4, 8, 9, 10, 11, 14, 15, 16 and 18 of "An Act in relation to the regulation of community currency exchanges, and the operators and employees thereof, and to make an appropriation therefor", approved June 30, 1943, as amended, are amended, and Sections .01, 19.1, 19.2, 28, 29 and 30 are added thereto, the amended and added sections to read as follows:

Sec. .01. The General Assembly has found and declares:

that the community currency exchange business, as hereinafter defined in Section 1, has become so widespread since the bank holiday in 1933, and so extensively and intimately integrated with the financial institutions of this State that it is affected with a public interest and should be licensed and regulated as a business affecting the convenience, general welfare, and economic interest of the people of this State;

that no community currency exchange should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act;

that the number of community currency exchanges should be limited in accordance with the needs of the communities they are to serve, and in accordance with the provisions of this Act;

that there has arisen also the ambulatory currency exchange business, as hereinafter defined in Section 1, which has engaged heretofore in unlicensed competition with the licensed community currency exchange business;

that it is in the public interest to promote and foster the community currency exchange business and to assure the financial stability thereof;

that the operations of the ambulatory currency exchange business have enabled it to appropriate the most profitable function of the community currency exchange business without incurring the expenses of, or subjecting itself to the regulations imposed upon the community currency exchange business, and to secure thereby an unfair advantage; that there has resulted therefrom an unfair and ruinous competition to the licensed community currency exchange business;

that the nature of the ambulatory currency exchange business is such as to render it hazardous and dangerous to the public safety and security;

that the public welfare demands that no ambulatory currency exchange business should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act.

Sec. 1. For the purposes of this Act:

"Community currency exchange" means any person, firm, association, partnership or corporation, except banks incorporated under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged *at a fixed and permanent place of business,* in the

business or service of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money acceptable to such community currency exchange, for a fee or service charge or other consideration, or engaged in the business of selling or issuing money orders under his or their or its name, or any other money orders (other than United States Post Office money orders, American Express Company money order, Postal Telegraph Company money orders, or Western Union Telegraph Company money orders), or engaged in both such businesses, or engaged in performing any one or more of the foregoing services.

"Ambulatory Currency Exchange" means any person, firm, association, partnership or corporation, except banks organized under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged in one or both of the foregoing businesses, or engaged in performing any one or more of the foregoing services; at any location other than that of a fixed and permanent place of business of his, their or its own.

"Auditor" means the Auditor of Public Accounts.

Nothing in this Act shall be held to apply to any person, firm, association, partnership, or corporation who is engaged primarily in the business of transporting for hire, bullion, currency, securities, negotiable or non-negotiable documents, jewels or other property of great monetary value and who [only] in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money directly for, or for the employees of and with the funds of and at a cost only to, the person, firm, association partnership, or corporation for whom he or it is then actually transporting such bullion, currency, securities, negotiable or non-negotiable documents, jewels, or other property of great monetary

value, pursuant to a written contract for such transportation and all incidents thereof, nor shall it apply to any person, firm, association, partnership or corporation engaged in the business of selling tangible personal property at retail who, [only] in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

Sec. 2. No person, firm, association, partnership or corporation shall engage in the business of a community currency exchange *or in the business of an ambulatory currency exchange* without first securing a license to do so from the Auditor.

Any person, firm, association, partnership or corporation issued a license *to do so* by the Auditor shall have authority to operate a community currency exchange *or an ambulatory currency exchange*, as defined in Section 1 hereof.

No license shall be issued for the conduct of an ambulatory currency exchange on any public street or highway. An ambulatory currency exchange shall be required to and shall secure a license or licenses for the conduct of its business at each and every location served by it, as provided in Section 4 hereof. No license issued for the conduct of its business at one location shall authorize the conduct of its business at any other location.

Any person, firm, association, partnership or corporation that violates this section [is guilty of a misdemeanor and, upon conviction thereof,] shall be fined not less than $500.00 nor more than $1000.00 or imprisoned in the county jail for not more than [(1)] year, or [may be] both [so fined and imprisoned], and the Attorney General or the State's Attorney of the county in which the violation occurs shall file a complaint in the Circuit Court of the county to restrain the violation.

Sec. 3. No community *or ambulatory* currency exchange shall be permitted to accept money or evidences of money as a deposit to be returned to the depositor or upon the depositor's order; and no community *or ambulatory* currency exchange shall be permitted to act as bailee or agent for persons, firms, partnerships, associations or corporations to hold money or evidences thereof or the proceeds therefrom for the use and benefit of the owners thereof, and deliver such money or proceeds of evidence of money upon request and direction of such owner or owners; provided, that nothing contained herein shall prevent a community *or an ambulatory* currency exchange from obtaining state automobile and city vehicle licenses for a fee or service charge, or from rendering a photostat service, or from rendering a notary service either by the proprietor of the currency exchange or any one of its employees, authorized by the State of Illinois to act as a notary public, or from selling travelers cheques obtained *by* the currency exchange from a banking institution under a trust receipt, or from issuing money orders or from accepting for payment local utility bills; provided, further, that in accepting any such payment the community *or ambulatory* currency exchange shall not be deemed to act as agent for the local utility, nor shall such community *or ambulatory* currency exchange be authorized to receipt for such payment in the name, or on behalf, of such utility.

Sec. 4. Application for such license shall be in writing under oath and in the form prescribed and furnished by the Auditor. Each application shall contain the following:

(a) The full name and address (both of residence and place of business) of the applicant, and if the applicant is a partnership or association, of every member thereof, and the name and business address if the applicant is a corporation;

(b) The county and municipality, with street and number, if any, where the community currency exchange is to be conducted, *if the application is for a community currency exchange license;* [and]

(c) If the application is for an ambulatory currency exchange license, the names and addresses of the plants or businesses at the location or locations to be served by it; and

[(e)] *(d)* The applicant's occupation or profession; a detailed statement of his business experience for the ten years immediately preceding his application; a detailed statement of his finances; his present or previous connection with any other [community] currency exchange; whether he has ever been involved in any civil or criminal litigation, and the material facts pertaining thereto; whether he has ever been committed to any penal institution or admitted to an institution for the care and treatment of mentally ill persons; and the nature of applicant's occupancy of the premises to be licensed *where the application is for a community currency exchange license. If the applicant is a partnership, the information specified herein shall be required of each partner. If the applicant is a corporation, the said information shall be required of each officer and director thereof.*

Such application shall be accompanied by a fee of [twenty-five dollars ($25.00)] *$25.00* which fee shall be for the cost of investigating the applicant. When the application *for a community currency exchange license* has been approved by the Auditor and the applicant so advised; an additional sum of [fifty dollars ($50.00)] *$50.00* as an annual license fee for a period terminating on the last day of the current calendar year shall be paid to the Auditor by the applicant; provided, that the license fee for an appli-

cant applying for *such* a license after July 1st of any year shall be ~~[twenty-five dollars ($25.00)]~~ *$25.00* for the balance of such year.

When the application for an ambulatory currency exchange license has been approved by the Auditor, and such applicant so advised, such applicant shall pay an annual license fee of $10.00 for each and every location to be served by such applicant; provided that such license fee for an approved applicant applying for such license after July 1st of any year shall be $5.00 for the balance of such year for each and every location to be served by such applicant. An approved applicant shall not be required to pay the initial investigation fee of $25.00 more than once. Such an approved applicant, when applying for a license with respect to a particular location, shall file with the Auditor, at the time of filing an application, a letter or memorandum, which shall be in writing and under oath, signed by the owner or authorized representative of the place of business where service is to be rendered; such letter or memorandum shall contain a statement that such service is desired, and that the person signing the same is authorized so to do.

Sec. 8. A community *or an ambulatory* currency exchange shall not be conducted as a department of another business. It must be an entity, financed and conducted as a separate business unit. This shall not prevent a community *or an ambulatory* currency exchange from leasing a part of the premises of another business for the conduct of this business on the same premises; provided, that no community currency exchange shall be conducted on the same premises with a business whose chief source of revenue is derived from the sale of alcoholic liquor for consumption on the premises; provided, further, that no community currency exchange hereafter licensed for the first

time shall share any room with any other business, trade or profession nor shall it occupy any room from which there is direct access to a room occupied by any other business, trade or profession.

Sec. 9. No community *or ambulatory* currency exchange shall issue tokens to be used in lieu of money for the purchase of goods or services from any enterprise.

Sec. 10. The applicant, and its [members,] officers and directors, if a corporation, shall be vouched for by two reputable citizens of this State setting forth that the individual mentioned is (a) personally known to them to be trustworthy and reputable, (b) that he has business experience qualifying him to competently conduct, operate, own or become associated with a [community] currency exchange, (c) that he has a good business reputation and is worthy of a license. Thereafter, the Auditor shall, upon approval of the application filed with him, issue to the applicant qualifying [hereunder] *under this Act,* a license to operate a [community] currency exchange [at the location specified in the application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked by the Auditor as herein provided]. *If it is a license for a community currency exchange, the same shall be valid only at the place of business specified in the application. If it is a license for an ambulatory currency exchange, it shall entitle the applicant to operate only at the location or locations specified in the application, provided the applicant shall secure separate and additional licenses for each of such locations. Such licenses shall remain in full force and effect until they are surrendered by the licensee, or revoked, or expire, as herein provided.* If the Auditor shall not so [find] *approve,* he shall not issue such license *or licenses* and shall notify the applicant of such denial, retaining the [twenty-five dollars ($25.00)] *$25.00* investigation fee to cover the cost of investigating

the applicant. The Auditor shall approve or deny every application hereunder within [the thirty (30)] *ninety* days from the filing thereof; *except that in respect to an application by an approved ambulatory currency exchange for a license with regard to a particular location to be served by it, the same shall be approved or denied within twenty days from the filing thereof.*

No application shall be denied unless the applicant has had notice of a hearing on said application and an opportunity to be heard thereon. If the application is denied, the Auditor shall, within twenty [(20)] days thereafter prepare and keep on file in his office a written order of denial thereof, which shall contain his findings with respect thereto and the reasons supporting the denial, and shall send by the United States mail a copy thereof to the applicant at the address set forth in the application, within [(5)] days after the filing of such order. A review of any such decision may be had as provided in Section [22] *22.01* of this Act.

Sec. 11. Such license, *if issued for a community currency exchange,* shall state the name of the licensee and the address at which the business is to be conducted. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable. *If issued for an ambulatory currency exchange, it shall so state, and shall state the name and office address of the licensee, and the name and address of the location or locations to be served by the licensee, and shall not be transferable and assignable.*

Sec. 14. Every licensee, shall, on or before [December 1] *November 15,* pay to the Auditor the [sum of fifty dollars ($50.00) as an] annual license fee *or fees* for the next succeeding calendar year and shall at the same time file with the Auditor *the annual report required by Section*

16 of this Act, and the annual bond *or bonds,* and *the* insurance policy or policies [in the same amount and of the same character] as *and if* required by [Sections 5 and 6 of] this Act. *The annual license fee for each community currency exchange shall be $50.00. The annual license fee for each location served by an ambulatory currency exchange shall be $10.00.*

Sec. 15. The Auditor may, upon ten [(10)] days notice to the licensee by United States mail directed to the licensee at the address set forth in the license, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard prior to such action, revoke any license issued hereunder if he shall find that:

(a) The licensee has failed to pay the annual license fee or to maintain in effect the required bond *or bonds* or insurance policy or policies or to comply with any order, decision, or finding of the Auditor made pursuant to this Act; or that

(b) The licensee has violated any provision of this Act or any regulation or direction by the Auditor under this Act; or that

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Auditor in refusing the issuance of the license.

The Auditor may revoke only the particular license *or licenses for particular places of business or locations* with respect to which grounds for revocation may occur or exist, or if he shall find that such grounds for revocation are of general application to all [offices] *places of business or locations,* or to more than one [office] *place of business or location* operated by such licensee, he may revoke all of the licenses issued to such licensee or such number of licenses to which such grounds apply, as the case may be.

A licensee may surrender any license by delivering to the Auditor written notice that he, *they or it* thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender, or affect the liability on his, *their or its* bond *or bonds, or his, their or its policy or policies of insurance, required by this Act,* or entitle such licensee to a return of any part of the annual license fee *or fees.*

Every license issued hereunder shall remain in force until the same *shall expire, or* shall have been surrendered or revoked in accordance with this Act, but the Auditor may on his own motion, issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the Auditor in refusing originally the issuance of such license under this Act.

No license shall be revoked until the license has had notice of a hearing thereon and an opportunity to be heard. When any license is so revoked, the Auditor shall within twenty [(20)] days thereafter, prepare and keep on file in his office, a written order or decision of revocation which shall contain his findings with respect thereto and the reasons supporting the revocation and shall send by United States mail a copy thereof to the licensee at the address set forth in the license within five [(5)] days after the filing in his office of such order, finding or decision. A review of any such order, finding or decision may be had as provided in Section [22] *22.01* of this Act.

Sec. 16. Each licensee shall annually, on or before the fifteenth day of [February] *November*, file a report with the Auditor *for the fiscal year period from October 1st through September 30th* (which shall be used only for the official purposes of the Auditor) giving such relevant information as the Auditor may reasonably require concern-

ing, and for the purpose of examining, the business and operations during the preceding [calendar] *fiscal* year period of each licensed [place of business] *currency exchange* conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Auditor and the Auditor may at any time and *shall* at least once in each year investigate the [community] currency exchange business of any licensee and of every person, partnership, association and corporation who or which shall be engaged in the business of operating a [community] currency exchange. For that purpose, the Auditor shall have free access to the offices and places of business and to such records of all such persons, firms, partnerships, associations and corporation and to the officers and directors thereof that shall relate to such [community] currency exchange business. *The Auditor may at any time, and shall at least once a year, inspect the locations served by an ambulatory currency exchange, for the purpose of determining whether such currency exchange is complying with the provisions of this Act at each location served.* The Auditor may require *by subpoena* the attendance of and examine under oath all persons whose testimony he may require relative to such business, and in such cases the Auditor, or any qualified representative of the Auditor whom the Auditor may designate, may administer oaths to all such persons called as witnesses, and the Auditor, or any such qualified representative of the Auditor, may conduct such examinations, and there shall be paid to the Auditor for each such examination a fee of [twenty dollars ($20.00)] *$20.00* for each day or part thereof *for each qualified representative designated and* required to conduct the examination; *provided, however, that in the case of an ambulatory currency exchange, such fee shall not be increased by reason of the number of locations served by it.*

Sec. 18. The applicant *for a community currency exchange license* shall have a permanent address as evidenced by a lease of at least six [(6)] months duration or other suitable evidence of permanency, and the license issued, pursuant to the application shall be valid only at that address or any new address approved by the Auditor.

Sec. 19.1. Whenever an ambulatory currency exchange shall be actively engaged at any place or station on a location licensed under this Act in the cashing of checks other than from within an armored vehicle, such currency exchange shall provide at least one armed guard at each such place or station in addition to the person or persons cashing checks.

Sec. 19.2. Before any license or renewal of license shall be issued for any location served by an ambulatory currency exchange, the applicant thereof shall file with and have approved by the Auditor a surety bond for each such location, issued by a bonding or insurance company, licensed to do business in this State, in the penal sum of $2,000.00. The bond shall be conditioned that the licensee serving the location shall comply with Section 19.1 of this Act and shall pay all lawful claims for money or other property loss, or bodily injury, suffered in the course and by reason of a holdup at such location, that shall occur at the time or times when said licensee failed to comply with said Section 19.1. Such bond shall run to the Auditor and shall inure to the benefit of any person or persons who shall establish a lawful claim or claims as aforesaid. The applicant shall have the right, at his, their, or its option, to file in lieu of the bond or bonds required by this section, a blanket surety bond, which he, they, or it shall have approved by the Auditor, issued by a bonding or insurance company, licensed to do business in this State, covering all

the locations served and to be served by such applicant, in a penal sum of not to exceed $100,000.00, conditioned and payable as aforesaid, and specifying that the liability thereunder for each location shall be limited to $2,000.00.

Sec. 28. Unless an ambulatory currency exchange shall engage in the business of selling or issuing money orders under his, their or its name, or any money orders other than those excepted in Section 1 of this Act, Sections 5, 6 and 7 of this Act shall not be applicable to it. Otherwise, said sections shall apply to it, if it shall engage in such business.

Sec. 29. The operation of any unlicensed community or ambulatory currency exchange, or the unlawful conduct or operation of any licensed community or ambulatory currency exchange, is hereby declared to constitute unfair competition with licensed and legally operated currency exchanges doing business in the same community. Any licensee operating legally under this Act in the same community shall have the right to apply to any court of competent jurisdiction for and obtain an injunction restraining such unfair competition.

Sec. 30. If any part or provision of this Act shall be declared unconstitutional, the unconstitutionality of such part or provision shall not invalidate the constitutional provisions of this Act.

Sec. 2. The title of said Act is amended to read as follows:

"An Act in relation to the definition, licensing and regulation of community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof".